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**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

VICTOR J. NG, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

vs.

BERKELEY LIGHTS, INC., et al.,

Defendants.

Case No. 4:21-cv-09497-HSG

CLASS ACTION

AMENDED COMPLAINT

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Lead Plaintiff Michael Damelio (“Lead Plaintiff”), together with Plaintiff Pompano Beach Police & Firefighters’ Retirement System (the “Retirement System”) (together, “Plaintiffs”), bring this consolidated action pursuant to Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the “Securities Act”) and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), as well as U.S. Securities and Exchange Commission (“SEC”) Rule 10b-5 promulgated thereunder, against Berkeley Lights, Inc. (“Berkeley Lights,” “BLI,” or the “Company”), certain current and former senior Company executives and directors, the underwriter firms that sponsored the Company’s July 17, 2020 Initial Public Offering (“IPO” or “Offering”), and the outside firms that controlled the Company. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated, who purchased or otherwise acquired: (a) Berkeley Lights common stock pursuant and/or traceable to the IPO Materials (defined below) issued in connection with the Company’s initial public offering on or about July 17, 2020; and/or (b) securities of Berkeley Lights during the period from July 17, 2020 and January 5, 2022, inclusive (“Class Period”) and were damaged thereby (“Class”).

Plaintiffs allege the following based upon their personal knowledge, upon their own acts, and upon information and belief as to all other matters. Plaintiffs’ information and belief is based on the ongoing investigation of their attorneys, including, among other things: a review of the Company’s publicly available SEC filings; media reports about the Company; the Company’s website and marketing materials; price and volume data for Company securities; consultation with investigators; and additional materials and data concerning the Company and industry, as identified herein.

### **SUMMARY OF THE ACTION**

1. This is a federal securities class action that arises from Defendants’ false and misleading statements and omissions regarding the functionality of digital cell biology company Berkeley Lights’s flagship product, the Beacon: a laboratory instrument used for screening cells sold to drug development and large pharmaceutical/biotech companies. In its IPO Registration Statement and throughout the Class Period, Defendants repeatedly emphasized the purported superiority of the Beacon compared to existing cell analyzing instruments. Defendants claimed the

1 Beacon's "unprecedented speed" and revolutionary technology had already garnered positive  
2 customer validation from leading biopharmaceutical companies like Amgen, Bayer, and others,  
3 was driving sustainable revenue growth, and afforded the Company an enormous market  
4 opportunity with a total addressable market ("TAM") of \$23 billion.

5       2. In reality, however, the Beacon suffered from numerous design and manufacturing  
6 defects rendering the \$2 million instrument unreliable and eliciting a myriad of customer  
7 complaints. In addition, given the Beacon's extraordinarily prohibitive cost, severe performance  
8 issues, lack of customer validation, and saturated potential-customer base, Defendants had also  
9 misrepresented the Company's TAM and growth prospects. Defendants' misrepresentations about  
10 the Beacon's functionality and marketability artificially inflated the price of Berkeley Lights's  
11 securities, until respected activist and short seller Scorpion Capital released a scathing and detailed  
12 investigatory report, based in part on 24 damning research interviews, including with 14 of  
13 Berkeley Lights's largest customers, all of whom described a "trail of customers who allege they  
14 were 'tricked,' misled, or over-promised into buying a \$2 million lemon."<sup>1</sup> Though Defendants  
15 tersely characterized the Scorpion Capital Report as containing "highly misleading statements,  
16 groundless claims and a clear lack of industry understanding," in the coming months, Berkeley  
17 Lights would go on to report deteriorating revenue, waning demand for the Beacon, a dismal  
18 financial outlook, and the demotion of the Company's CEO—almost precisely the same fate  
19 Scorpion Capital had earlier predicted. These events caused the price of Berkeley Lights's  
20 securities to plummet, significantly injuring investors.

21       3. Founded in 2011 and based in Emeryville, California, Berkeley Lights is a venture-  
22 capital-backed biotechnology company that sells primarily one product, the Beacon—a high-end  
23 flow cytometry and cell sorting machine launched in 2016 under the direction of Defendant Eric  
24 Hobbs. In simple terms, the Beacon uses light and semiconductor technology to move individual  
25 cells so they can be isolated, cultured, assayed, and exported. Or as Defendant Hobbs has

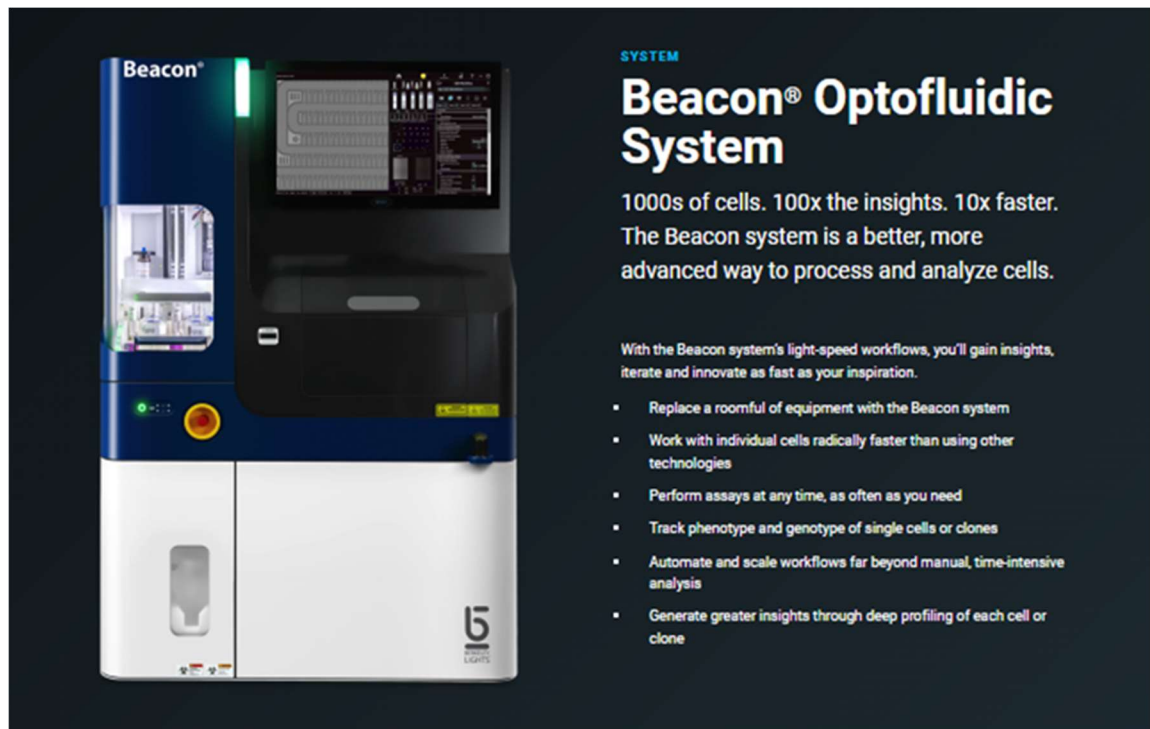
26  
27 <sup>1</sup> See Scorpion Capital Report, attached hereto as Exhibit A. This Amended Complaint  
28 incorporates the allegations in the Scorpion Capital Report, including the many confidential  
witness interviews summarized therein, by reference.

1 explained, Berkeley Lights's "technology captures data from thousands of single cells, over time,  
2 allowing biologists to gain deeper information about populations and sub populations than any  
3 other method can provide."

4 4. Flow cytometer technology, which was first developed in the 1950's and underlays  
5 Berkeley Lights's product, has been a standard commodity tool in labs for half a century. Scores  
6 of vendors, including well-established, multi-billion-dollar market cap companies such as Sony,  
7 Becton Dickinson, and Thermo Fisher sell cytometers at retail prices between \$75,000 to  
8 \$100,000. By contrast, Berkeley Lights reportedly charges customers \$2 million for each Beacon  
9 instrument, more than 20 times the price charged by competitor firms. Although the use cases for  
10 flow cytometers and the Beacon are substantially identical, Berkeley Lights's value proposition is  
11 that the Beacon's advanced functionality allows for faster screens.

#### 12 **The Beacon**

13 *\*as advertised on Berkeley Lights website\**



25

26 5. In the Company's early stages, Berkeley Lights received hundreds of millions of  
27 dollars in private equity financing from several Menlo Park, California-based venture capital firms,  
28 including Sequoia Capital and WRVI, as well as Japanese imaging-technology provider Nikon

1 Corp. In Summer 2020, in the wake of several notable tech stock debuts, the Company announced  
2 its intent to go public through an IPO valuing the Company at more than \$1 billion, thereby putting  
3 the Company's venture capital investors in a prime spot to exit their position in Berkeley Lights  
4 while raking in enormous returns.

5 6. In its July 17, 2020 IPO offering documents ("IPO Materials"), Defendants hyped  
6 the functionality of Berkeley Lights's product platform, claiming it provides "the most advanced  
7 environment for rapid functional characterization of single cells at scale." Defendants also stated  
8 that the Berkeley Lights platform delivers "the best cells" and "provides the deepest information,  
9 with linked phenotypic and genotypic data, on tens of thousands of live single cells relevant to the  
10 customers' end product specifications." Further, Defendants claimed that "this level of scale and  
11 precision is not attainable with other approaches."

12 7. Defendants also highlighted in the IPO Materials Berkeley Lights's purported  
13 operational and financial growth, stating that the Company's direct platform sales had increased  
14 84% year-over-year to \$39.1 million for its fiscal 2019. Therein, Defendants stated that Berkeley  
15 Lights had placed 26 machines in 2019, a 117% increase over the prior year, and six machines in  
16 the first quarter of 2020, a 20% increase over the first quarter of 2019. Defendants further enticed  
17 investors by representing that the "total addressable market" for the Company's products and  
18 services was an astounding "\$23 billion." On an individual level, Defendant Hobbs also met  
19 personally with potential investors, holding over 180 Zoom calls in the three days preceding the  
20 IPO to help take the Company public.

21 8. Propelled by the IPO Materials' glowing statements concerning the Company's  
22 flagship product's superior functionality and Berkeley Lights's growth potential, the IPO, which  
23 closed on July 21, 2020, was a rousing success. Altogether, the Company sold approximately  
24 9.315 million shares of common stock to the public at the IPO price of \$22 per share, for  
25 approximate proceeds to the Company of \$204.9 million before deducting underwriting discounts,  
26 commissions, and other offering expenses payable by Berkeley Lights. Prominent investment  
27 banks J.P. Morgan, Morgan Stanley, and Cowen acted as lead book-running managers for the  
28 offering, with William Blair acting as a co-manager.



1           9.       Thereafter, throughout the Class Period, Defendants continued to emphasize the  
2 purported capabilities and effectiveness of the Berkeley Lights platform (*i.e.*, the Beacon), stating,  
3 for example, that the platform “captures and delivers rich single-cell data to find the best cells”  
4 and “allows for a high level of control over live single cells or other micro-objects throughout the  
5 functional characterization process.” Defendants also represented that Berkeley Lights was  
6 experiencing numerous tailwinds driving sales growth.

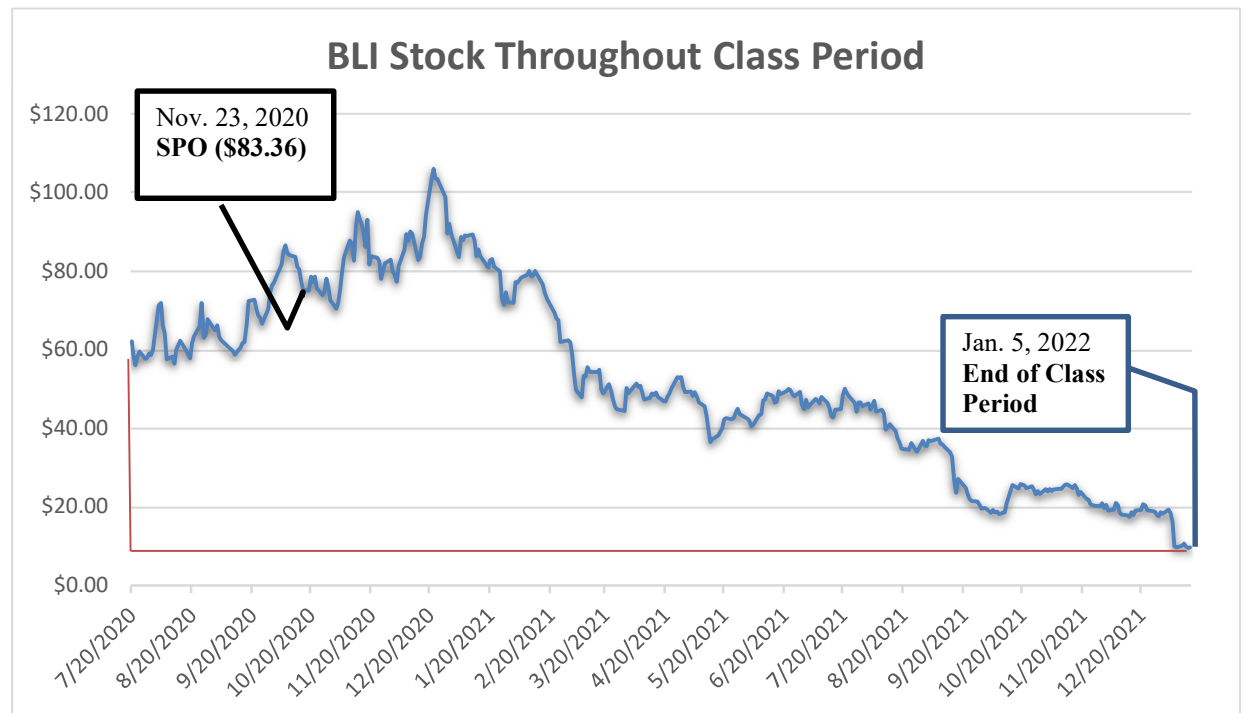
7           10.      Unbeknownst to investors, the IPO Materials were negligently prepared and, as a  
8 result, contained untrue statements of material fact or omitted to state other facts necessary to make  
9 the statements made not misleading and were not prepared in accordance with the rules and  
10 regulations governing their preparation. Additionally, throughout the Class Period, Defendants  
11 made materially false and misleading statements and omissions concerning the effectiveness of  
12 the Company’s platform, the platform’s value to Berkeley Lights’s potential and existing  
13 customers, and size of the biotechnology market for the platform. Specifically, the IPO Materials  
14 and Defendants’ Class Period statements misled investors by concealing that the Beacon suffered  
15 from numerous design and manufacturing defects including breakdowns, high error rates, data  
16 integrity issues and other problems, limiting the ability of biotechnology companies and research  
17 institutions to consistently use the machines at scale. Defendants failed to disclose that Berkeley  
18 Lights had received numerous customer complaints regarding the durability and effectiveness of  
19 its automation systems, including complaints related to the design and manufacturing. Moreover,  
20 the IPO Materials and Defendants’ Class Period statements overstated the actual market for  
21 Berkeley Lights’s products and services, which was merely a fraction of the \$23 billion represented  
22 to investors due to the relatively high cost of the Company’s instruments and consumables and  
23 inability to provide the sustained performance necessary to justify these high costs.

24           11.      Defendants profited greatly from their misstatements and omissions at the expense  
25 of unsuspecting investors. After Defendants converted their initial ownership interests in the  
26 Company into common stock via the IPO, Defendants cashed in on those holdings in the  
27 Company’s November 2020 Secondary Public Offering (“SPO,” and, together with “IPO,” the  
28 “Offerings”). Thereafter, Defendants continued to derive substantial benefit, to the detriment of

the Class, from their pervasive and significant insider sales, until the truth about the Berkeley Lights platform was slowly, but eventually, revealed to the market.

12. The truth about Berkeley Lights's failed platform first began to emerge slowly as the Company returned repeatedly dismal results at the start of 2021 and introduced various mechanisms to prop up sales and placements of its platform. Then, on September 17, 2021, Scorpion Capital, an activist short seller firm focused on exposing frauds and stock promotions in the life science industry, issued a short seller report (the "Scorpion Capital Report") outlining the many failures of Berkeley Lights. As detailed herein, the Scorpion Capital Report was based on 24 research interviews, including interviews with 14 of Berkeley Lights's largest customers, that described a "trail of customers who allege they were 'tricked,' misled, or over-promised into buying a \$2 million lemon."

13. As the repeated failures of Berkeley Lights's platform were documented, Defendants attempted to keep their finger in the dam for months, denying the accuracy of the Scorpion Capital Report and attempting to minimize the financial damage. Finally, in January 2022, the dam could no longer hold, as Berkeley Lights demoted the Company's CEO and announced a significant revenue shortfall for 2021. Over the course of the Class Period, Berkeley



1 Lights had fallen from an \$80+ per share rising venture capital-backed IPO star (when Defendants  
2 offloaded their shares) to a \$10 per share company with a broken platform in search of a market.

3 14. As a result of Defendants' wrongful acts and omissions, and the precipitous decline  
4 in the market value of the Company's securities, Plaintiffs and other Class Member have suffered  
5 significant losses and damages.

6  
7 **JURISDICTION AND VENUE**

8 15. The claims asserted herein arise under §§ 11, 12(a)(2), and 15 of the Securities Act,  
9 15 U.S.C. §§ 77k, 77l(a)(2), and 77o, §§ 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b)  
10 and 78t(a), and Rule 10b-5, 17 C.F.R. §240.10b-5, promulgated thereunder.

11 16. This Court has jurisdiction over the subject matter of this action under 28 U.S.C.  
12 §§ 1331 and 1337, § 22 of the Securities Act (codified at 15 U.S.C. §77v), and § 27 of the  
13 Exchange Act (codified at 15 U.S.C. § 78aa).

14 17. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)-(c), § 22 of the  
15 Securities Act (15 U.S.C. § 77v), and § 27 of the Exchange Act, because the Company conducts  
16 business in this District and the events and omissions giving rise to the claims asserted herein  
17 occurred in substantial part in this District, including the dissemination of false and misleading  
18 statements. Defendant Berkeley Lights maintains its corporate headquarters in this District.

19 18. In connection with the acts alleged in this complaint, Defendants, directly or  
20 indirectly, used the means and instrumentalities of interstate commerce, including, but not limited  
21 to, the mails, interstate telephone communications and the facilities of the national securities  
22 markets.

**EXCHANGE ACT CLAIMS**

**I. PARTIES**

**A. Plaintiffs**

19. Lead Plaintiff Michael Damelio purchased shares of Berkeley Lights common stock during the Class Period and was damaged thereby, as set forth in the Certification, previously filed in this action. *See* ECF Nos. 25-2, 60-2.

20. Named Plaintiff Pompano Beach Police & Firefighters' Retirement System is an institutional investor that provides retirement benefits to police officers and firefighters in Pompano Beach, Florida. Established in 1972, the Retirement System has hundreds of members and maintains assets of more than \$250 million. The Retirement System purchased shares of Berkeley Lights common stock during the Class Period and was thereby damaged, as set forth in the attached Certification, which is incorporated by reference herein. As further reflected in the attached Certification, the Retirement System purchased shares of Berkeley Lights common stock in the Company's July 2020 IPO. *See* Exhibit B.

**B. Berkeley Lights Defendants**

21. Defendant Berkeley Lights is a biotechnology company headquartered in Emeryville, California. The Company's common stock is listed on the Nasdaq Global Select Market ("Nasdaq") under the ticker symbol "BLI."

22. Defendant Eric D. Hobbs ("Hobbs") served as the Chief Executive Officer ("CEO") of Berkeley Lights and a member of the Company's Board of Directors (the "Board") at all relevant times, until his unexpected transition, effective March 9, 2022, to president of the Company's Antibody Therapeutics business line.

23. Defendant Shaun M. Holt ("Holt") served as the Chief Financial Officer ("CFO") of Berkeley Lights at all relevant times until his unexpected transition, effective March 15, 2021, to an advisory role and subsequent departure from the Company on April 30, 2021.

24. Defendant Kurt Wood ("Wood") served as the CFO of Berkeley Lights from March 15, 2021 until his unexpected departure from the Company, effective April 1, 2022. He remained with the Company through April 30, 2022 in an advisory position to help with the transition to a

1 new CFO. Prior to serving as CFO, Defendant Wood served as the Company's Vice President of  
2 Business Development.

3 25. Defendants referenced above in ¶¶ 22-24 are referred to herein as the "Individual  
4 Defendants." During the Class Period, the Individual Defendants ran the Company as hands-on  
5 managers, overseeing Berkeley Lights's operations, business practices, and finances, and made the  
6 materially false and misleading statements described herein. The Individual Defendants had  
7 intimate knowledge about core aspects of Berkeley Lights's financial and business operations,  
8 including the Company's proprietary technologies and business relationships. They were also  
9 intimately involved in deciding which disclosures would be made by the Company.

### 10 **C. Control Defendants**

11 26. Defendant WRVI Capital ("WRVI") is a venture capital fund focused on the  
12 technology industry and includes any subsidiaries or affiliates that directly held shares of or  
13 otherwise had voting and dispositive power over Berkeley Lights stock, including, but not limited  
14 to, the following: Walden Riverwood GP, LLC, Walden Riverwood Ventures, L.P., WIIG  
15 Communications Management LLC, WRV-BLI LLC, WRV-BLI II, LLC, WRV-BLI III LLC,  
16 WRV-BLI IV, LLC., WRV GP II, LLC, and WRV II, L.P. Defendant WRVI was an early backer  
17 of Berkeley Lights and at the time of the IPO owned 25.5% of the Company. As a result of its  
18 economic interest in the Company, WRVI appointed several members to the Board of Directors.  
19 WRVI's founding managing partner, Michael Marks ("Marks," named defendant for the Securities  
20 Act Claims, *see infra*), served on the Berkeley Lights's Board of Directors from April 2014 until  
21 his retirement in May 2021, at which time he was serving as the Board's chairperson.

22 27. Defendant Sequoia Capital ("Sequoia") is a venture capital fund focused on the  
23 technology industry and includes any subsidiaries or affiliates that directly held shares of or  
24 otherwise had voting and dispositive power over Berkeley Lights stock, including, but not limited  
25 to, the following: SC US (TTGP), Ltd, SC U.S. Venture XV Management, L.P., SC U.S. Growth  
26 VI Management, L.P., Sequoia Capital U.S. Venture Fund XV, L.P., Sequoia Capital U.S. Venture  
27 Partners Fund XV, L.P., Sequoia Capital U.S. Venture Partners Fund XV (Q), L.P., Sequoia  
28 Capital U.S. Venture XV Principals Fund, L.P., Sequoia Capital U.S. Growth Fund VI, L.P., and

1 Sequoia Capital U.S. Growth VI Principals Fund, L.P. Defendant Sequoia was an early backer of  
2 Berkeley Lights and at the time of the IPO owned 15% of the Company. As a result of its economic  
3 interest in the Company, Sequoia appointed several members to the Board of Directors, including  
4 its managing partner Michael Moritz (“Moritz,” named defendant for the Securities Act Claims).  
5 Moritz has served on Berkeley Lights’s Board of Directors from April 2015 through the present,  
6 including on various standing committees of the Board.

7 28. Defendant Nikon Corporation is a Japanese publicly traded corporation  
8 specializing in optics and imaging products. Nikon Corporation entered into a distribution  
9 agreement with Berkeley Lights in January 2018, and pursuant to that agreement, from March  
10 2019 through at least March 2022, served as the Company’s exclusive distributor of products in  
11 Japan, Singapore, Thailand, and South Korea and non-exclusive distributor in China.  
12 Additionally, Nikon had a significant financial interest in the Company prior to the IPO, owning  
13 8.1% of the Company, and Mr. Makoto Shintani, Nikon’s Corporate Vice President and Deputy  
14 General Manager from April 2015 until March 2019 and later a Senior Fellow of the Healthcare  
15 Business Unit of Nikon, served on the Berkeley Lights’s Board of Directors from May 2018  
16 through July 2020.

17 29. Defendant Igor Khandros is the founder and former CEO of Berkeley Lights. He  
18 served as CEO from 2011 to March 2017. At the time of the IPO, Khandros owned 22.3% of the  
19 Company and appointed multiple members to the Board of Directors, including himself. Khandros  
20 has served on the Berkeley Lights’s Board of Directors from 2011 through the present. Khandros  
21 continues to own a significant portion of the Company, being the largest single shareholder in the  
22 Company with beneficial ownership of 13% of the Company’s shares.

23 30. Defendants WRVI, Sequoia, Nikon, and Khandros are collectively referred to  
24 herein as the “Control Defendants.” Through their significant ownership interest in the Company,  
25 appointment of directors, and managing personnel’s seats (or, in the case of Khandros, his own  
26 seat) on the Board, the Control Defendants had the power to influence and exerted this power over  
27 Berkeley Lights during the Class Period. In addition, the Control Defendants had unique insight  
28

1 into the Company's operations through their business relationships with Berkeley Lights and/or  
 2 information rights gained as a part of their investments in the Company.

3 **D. Relevant Non-Party**

4 31. Scorpion Capital is an American activist short seller firm that specializes in  
 5 publishing intensive, differentiated research reports on publicly traded companies the firm believes  
 6 to be engaged in securities fraud and/or stock promotion. Over the past four years, Scorpion  
 7 Capital has released investigative reports on at least seven publicly traded companies. At least one  
 8 court in this District has credited Scorpion Capital's research in a securities fraud case.<sup>2</sup>

9 32. Scorpion Capital is led by Kir Kahlon ("Kahlon"), the firm's founder and Chief  
 10 Investment Officer. Mr. Kahlon has frequently appeared on business news and financial news  
 11 media outlets including CNBC and Zer0es TV to address and defend Scorpion Capital's reports.  
 12 Prior to establishing Scorpion Capital, Kahlon worked for Seligman Investments, a firm based in  
 13 Silicon Valley and New York with approximately \$15 billion under management. Prior to  
 14 Seligman, Kahlon worked with Tiger Global, a pre-eminent hedge fund, focusing exclusively on  
 15 deep-dive investigative shorts. Kahlon began his career at the global management consulting firm  
 16 Bain & Company, upon graduation from college, and entered the investment business in 2004  
 17 when he was hired by activist investor Carl Icahn. Kahlon graduated from UC Berkeley (BA) with  
 18 Highest Honors in 1992 and Harvard Business School (MBA) in 1998.

19  
 20 **II. FACTUAL BACKGROUND**

21 33. Berkeley Lights is a biotechnology company headquartered in Emeryville,  
 22 California. The Company was founded in 2011 by Ming Wu, William Davidow, and Defendant  
 23 Khandros. Berkeley Lights owns and operates a proprietary platform for analyzing and processing  
 24 cell data for use in the development and commercialization of biotherapeutics and other cell-based  
 25 products, focusing on the markets of antibody therapeutics, cell therapy and synthetic biology.

26  
 27 <sup>2</sup> See *In re QuantumScape Sec. Class Action Litig.*, No. 3:21-CV-00058-WHO, 2022 WL  
 28 137729 (N.D. Cal. Jan. 14, 2022) (Orrick, J.) (finding Scorpion Capital short report based on  
 unnamed employees and experts reliable).

1           34. Berkeley Lights claims that its proprietary platform provides the most advanced  
2 technology available for the rapid functional characterization of single cells at scale. This  
3 technology purportedly enables the end user, such as a biotechnology company or research  
4 institution, to characterize the performance of cells relevant to the desired cell-based product early  
5 in the research and development process and then connect this phenotypic data to the genetic code  
6 to each cell. The Company claims that the level of scale and precision offered by its platform “is  
7 not attainable with other approaches,” allowing vast amounts of cell data to be analyzed much  
8 quicker and with more control than in traditional processes.

9           35. The centerpiece of the Berkeley Lights platform is the Company’s advanced  
10 automation system, the Beacon. The Beacon is a fully automated, high throughput system  
11 designed to allow detailed cell analysis at scale. The Beacon is used by Berkeley Lights’s  
12 customers for tasks such as antibody discovery and cell line development and uses a proprietary  
13 light imaging technology known as OptoElectro Positioning. The Company reportedly charges \$2  
14 million for each Beacon instrument—far above the industry standard for other cell screening  
15 machines—and justifies this high cost by pointing to the purported improvement in speed, scale  
16 and precision offered by the instrument.

17                   **Berkeley Lights’s Graphic Regarding Beacon’s Screening Times**

18                                   *\*as advertised on Berkeley Lights website\**  
19  
20  
21  
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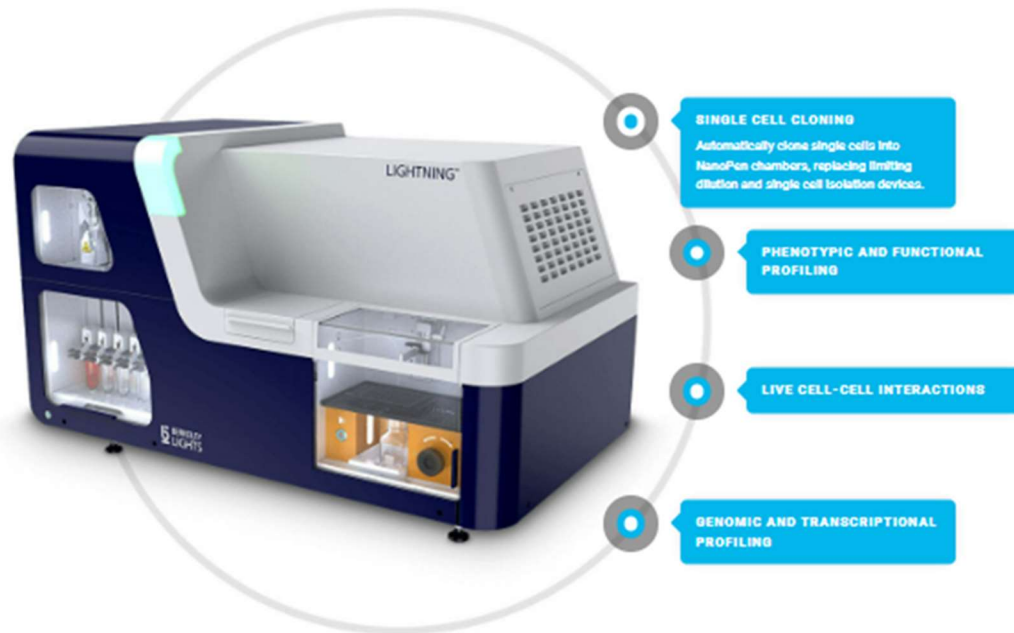




36. Berkeley Lights also offers a pared down automation system known as the Lightning at a lower price point, as well as an instrument for use in workflows requiring an extended cell culture period known as the Berkeley Lights Culture Station.

### The Lightning

*\*as advertised on Berkeley Lights website\**



37. In addition to its automation systems, Berkeley Lights manufactures proprietary consumables such as its OptoSelect chips and reagent kits for use with the automation systems as a part of its overall platform. The Company's proprietary OptoSelect chips are used to house and manipulate cells and cell environments using the Company's NanoPen technology. Berkeley Lights OptoSelect chips are commercially available in five different sizes, with the largest housing 14,000 pens. The OptoSelect chips are single-use consumables and must be replaced after each workflow. Similarly, the Company offers reagent kits to support on-chip analysis with a variety of capabilities, such as sample preparation, enhancement of culture cells, assays, and other tasks. These workflow consumables can significantly increase the costs of using the Berkeley Lights platform. For example, the Beacon is estimated to cost \$15,000 per full run based on the four OptoSelect chips that would be used.

38. The Berkeley Lights platform is further supported by the Company's proprietary automation and analysis software, including the Company's Cell Analysis Suite software. The Cell Analysis Suite forms the foundation for all workflows run on the Beacon and Lightning. The software controls the systems, acquires, and analyzes data, and directs all operations included in each automated workflow, including cell and NanoPen selection, on-chip immunoassay analysis,

1 single-cell imaging, automatic clone selection, and removal from the NanoPens and exporting  
2 living cells.

3         39. Berkeley Lights generates both product revenue and service revenue. The  
4 Company defines sales of advanced automation systems, recurring revenue from consumables,  
5 workflow subscription agreements and workflow licenses as “product revenue,” and revenue from  
6 joint development agreements and partnerships, service and warranty contracts, feasibility studies  
7 and platform support as “service revenue.” These revenues are derived through three revenue  
8 streams: (i) direct platform sales, comprised of the sale of advanced automation systems and, in  
9 certain instances, fully paid workflow licenses and platform support services; (ii) recurring  
10 revenue, comprised of the sale of consumables such as the Company’s OptoSelect chips and  
11 reagent kits, as well as extended warranty and service programs and, in certain instances,  
12 renewable workflow licenses; and (iii) revenue from joint development agreements and  
13 partnerships whereby the Company provides services for the development of new workflows, cell  
14 or organism types, or delivers specific biological assets to meet specific customers’ needs, often  
15 in connection with specified development milestones. Direct platform sales account for the  
16 majority of Company revenues. For example, during its fiscal 2019, direct platform sales  
17 accounted for 69% of total Berkeley Lights revenue, compared to 14% attributable to recurring  
18 revenue and 17% attributable to milestone revenue.

19         40. In July 2020, Berkeley Lights conducted its initial public offering, which generated  
20 over \$200 million in offering proceeds, including the full exercise of the underwriters’ over-  
21 allotment option. In the days leading up to the IPO, Defendant Hobbs went on a media blitz to  
22 sell the IPO and made himself available to meet with prospective investors in a marathon virtual  
23 roadshow. As reported by Defendant Hobbs in an August 2020 interview with CNN, most of these  
24 Zoom calls were one-on-one. In total, Hobbs reported having over 180 Zoom meetings regarding  
25 Berkeley Lights, its platform, and/or the representations made in the Company’s IPO Materials, as  
26 previewed by the article’s headline:

**Excerpt from CNN Business Article:**

**Health care CEO does 180 Zoom calls in three days to help take company public**

By Paul R. La Monica, CNN Business  
Updated 1:46 PM ET, Wed August 12, 2020



Dr. Eric Hobbs, CEO of Berkeley Lights.

**New York (CNN Business)** — Being in charge of a health care company during a pandemic is a ton of work — just ask Eric Hobbs, CEO of Berkeley Lights, who met with 180 investors over Zoom over three and a half days — and lost 10 pounds over the process.

41. At the time of the IPO, the Control Defendants, as described in more detail below, collectively owned a majority of the outstanding shares of the Company.

42. Then, less than four months after the IPO, on November 16, 2020, Berkeley Lights announced it would be conducting a secondary offering of stock to allow certain insiders to sell their personal Berkeley Lights shareholdings (the “SPO”). In the SPO, several Berkeley Lights insiders, including Control Defendants WRVI, Nikon, and Khandros and WRVI’s founding managing partner and director of Berkeley Lights, Michael Marks (named defendant for the Securities Act Claims), sold 3.45 million Berkeley Lights shares to investors at \$86 per share, generating nearly \$300 million in gross offering proceeds for the selling insiders. The SPO was unusual not only because of its close proximity to the IPO but also because the underwriters for the IPO agreed to allow the selling stockholders to exit their IPO lockup agreements early.

1           **A.     The Company Depended on the Beacon and Placement of Beacons with**  
 2           **Customers**

3           43.     As discussed above, the Beacon serves as the centerpiece of the Berkeley Lights  
 4 platform and the Company's flagship product. As such, the success of the Beacon—that is, the  
 5 machine's ability to meet the Company's promises in terms of providing “the most advanced  
 6 environment for rapid functional characterization of single cells at scale” and the Company's  
 7 ability to place significant numbers of Beacon machines with customers—is vital to the Company.

8           44.     As explained above, direct platform sales are the most important revenue stream  
 9 for Berkeley Lights, and direct platform sales are, in turn, largely driven by sales of the Beacon.  
 10 Or, in the words used by the Company itself in its IPO Prospectus: “our revenue has been primarily  
 11 generated from direct platform sales, largely driven by Beacon.” The Company made the same  
 12 disclosure throughout the Class Period, including in its SPO Prospectus and 2020 Form 10-K, and  
 13 even after the Class Period, in its 2021 Form 10-K.

14           45.     Recurring revenue, a separate revenue stream from direct platform sales and one  
 15 that was growing over the course of the Class Period, was also dependent on placing platforms  
 16 with customers. For example, the Company explained in its IPO Prospectus, “[e]ach platform  
 17 placement, depending on the chosen access model, drives various streams of recurring revenue.”

18           46.     Likewise, the Company introduced subscription models in an effort to drive greater  
 19 platform placements. For example, as Defendant Wood explained during the Q1 2021 Earnings  
 20 Call: “What we believe is the new subscription model, increases the SAM and increases the unit  
 21 placements. So we would expect that to drive incremental unit placements.” Similarly, Defendant  
 22 Wood explained during the Q2 2021 Earnings Call: “Our TechAccess subscription offering is  
 23 designed to increase our served available market opportunity and drive incremental platform  
 24 placements.”

25           47.     Everything was aimed at getting Beacons into customers' hands and then trying to  
 26 ensure they used them, including developing workflows for the platform. Essentially use cases,  
 27 the Company developed workflows understanding their use in driving customer adoption of  
 28 Beacons. As Defendant Hobbs explained during the Q4 2020 Earnings Call: “[a]nd so what

1 happens is the workflow goes out of the market, [] and then it becomes a revenue stream for us.  
 2 And that revenue stream can come in multiple ways. It can be tool placements via CapEx sales, it  
 3 can be subscriptions as we've discussed previously."

4 48. Partnerships went hand in hand with developing workflows, and while generating  
 5 moderate revenue for the Company in the short term, ultimately were aimed at developing use  
 6 cases for and placements of the Beacon platform. *Id.*

7 **B. The Control Defendants Maintained Significant Control Over Berkeley**  
 8 **Lights**

9 49. The Control Defendants—WRVI, Sequoia, Nikon, and Khandros—maintained and  
 10 exerted significant control over Berkeley Lights at all times leading up to and through the IPO and  
 11 SPO when they began to liquidate their holdings in the Company, reaping significant financial  
 12 gains for themselves, and to the detriment of Plaintiffs and the Class.

13 50. Each of the Control Defendants owned a significant direct interest in Berkeley  
 14 Lights, allowing them to appoint and control the Company's Board of Directors.

15 51. Prior to the IPO, Defendant Khandros, the founder and former CEO of the  
 16 Company, held the vast majority (~81-83%) of the outstanding shares of the Company's Series A,  
 17 A-1, and A-2 preferred stock (Series A: 3,000,000/3,660,000; Series A-1: 1,250,001/1,500,000;  
 18 and Series A-2: 5,707,762/7,024,937), and as a result, had the ability to, and did in fact, designate  
 19 two members of the Board of Directors. He designated himself to one of these Board seats—a  
 20 position he still holds today.

21 52. Prior to the IPO, WRVI held the vast majority (62%) of the outstanding shares of  
 22 the Company's Series B preferred stock (8,406,337/13,592,338), and as a result, had the ability to,  
 23 and did, designate one member of the Board of Directors.

24 53. Prior to the IPO, Sequoia held the vast majority (71%) of the outstanding shares of  
 25 the Company's Series C preferred stock (6,825,937/9,637,965), and as a result, had the ability to  
 26 (and did) designate two members of the Board of Directors. WRVI designated its managing  
 27 partner Moritz, along with the founding managing partner of WRVI, Marks.  
 28



54. Lastly, prior to the IPO, Nikon was the largest single holder (32%) of the Company's Series E preferred stock (2,874,829/9,103,617), with other Defendants (specifically, WRVI (8%), Sequoia (5%), and Marks (4%)) holding significant shares as well. Series E stockholders, voting as a separate class, designated one member of the Board of Directors. As the single largest holder of Series E preferred stock, Nikon had significant influence over the appointment of this director. The Series E stockholders designated Nikon's corporate vice president, Makoto Shintani, to this seat on the Board, a position in which he served from May 2018 through July 2020.

55. Khandros, WRVI, Sequoia, and Nikon, combined, beneficially owned 62.8% (22.3%, 25.5%, 15.0%, and 8.1%, respectively) of all outstanding shares of Berkeley Lights stock (common and preferred) prior to the IPO, and as such, collectively had the ability to (and did) designate at least two additional members of the Board of Directors.<sup>3</sup> This was separate and apart from their ability to designate the Board members indicated above as a result of their individual holdings of the various series of preferred stock.

56. In total, between them, the Control Defendants designated at least seven (and quite possibly eight) of the ten members of Berkeley Lights's Board of Directors prior to the IPO, and this does not include the seat held by Defendant Shintani, Nikon's corporate vice president. After two members of the Board resigned or retired in connection with the IPO, the Control Defendants' combined designees made up at least six of the eight sitting Board members when the Company went public in July 2020 and included Defendants Khandros, Marks, and Moritz.

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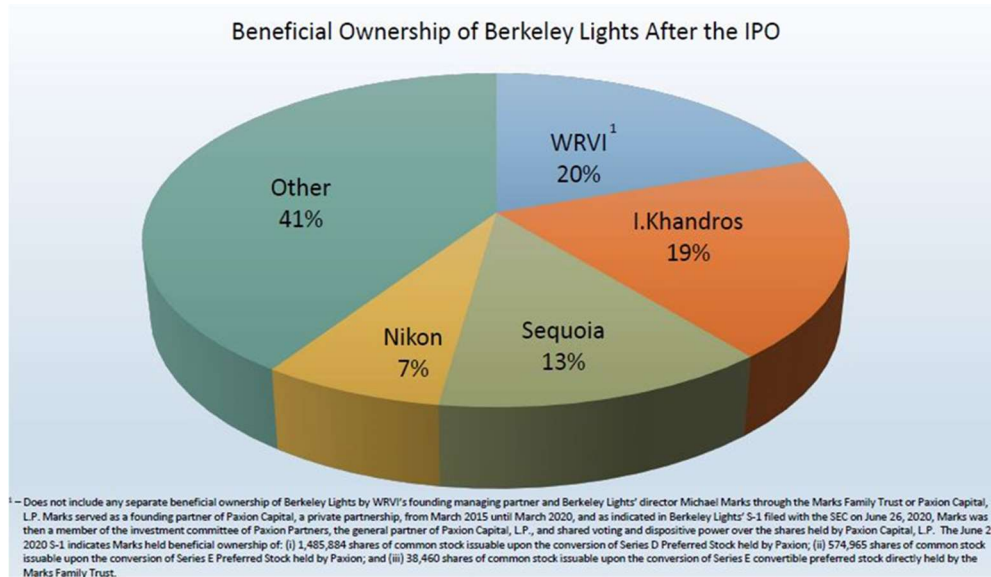
<sup>3</sup> It's quite likely that the Control Defendants designated a third additional Board member as majority holders of the outstanding "voting stock" in the Company, which, voting together as a single class, designated one of the directors. It is not entirely clear, however, how "voting stock" was defined and thus whether the Control Defendants held a majority of all outstanding voting stock and designated a director in this capacity as well.

## CONTROL DEFENDANTS' CONTROL OVER BLI'S BOARD MEMBERS



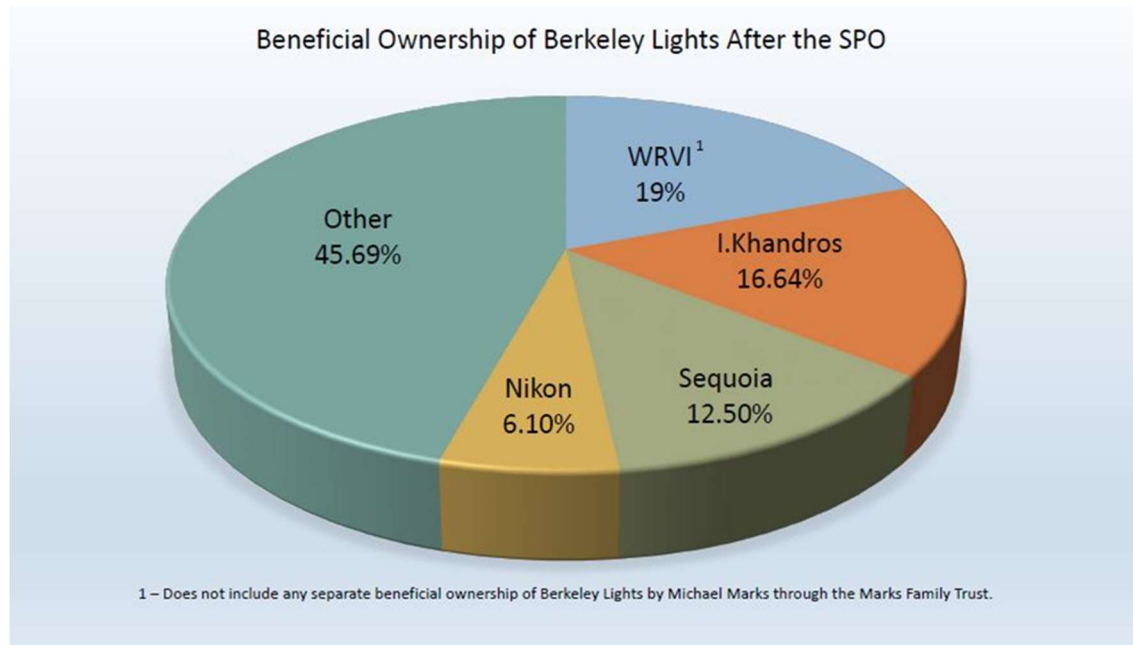
57. In addition, prior to the IPO, Marks, WRVI's founding managing partner, controlled a significant number of shares in his own right, upwards of 3.3% of all outstanding stock in the company (separate and apart from any interest or control in stock owned by WRVI).

58. The Control Defendants continued to exercise significant control over Berkeley Lights after the IPO. As summarized in the chart below, even after the IPO, the Control Defendants owned the vast majority of the outstanding shares of Berkeley Lights stock.



59. As explained in more detail below, the Control Defendants began to exit the company as soon as they could, starting with their sale of significant numbers of Berkeley Lights shares in the November 2020 SPO, but even after the SPO, they still maintained a controlling interest of outstanding shares in the Company, as illustrated in the following chart.





60. The Control Defendants thus continued to exert a significant amount of power over the Company after the SPO, including through their ability to control the appointment of new board members. In addition, throughout much, if not all, of the Class Period the Control Defendants maintained their direct presence on the Board through the seats held by their managing partners (or, in the case of Defendant Khandros, Khandros himself). Defendants Khandros and Moritz continue to serve on the Board to this day, and Defendant Marks maintained his Board seat until his retirement in May 2021, serving as the Board's chairperson at the time of his retirement. Indeed, despite stepping down as CEO in 2017, Khandros, in his own words, has "maintain[ed] a very active presence in the company" as he "directs his energies to creating and building strategic partnerships." Furthermore, as directors at the time of the IPO and SPO, Khandros, Marks, and Moritz signed the offering materials for each, and thus were responsible for the content and dissemination of these materials, including the false and misleading statements therein. Likewise, Nikon's Shintani served as a director at the time of the IPO and signed the IPO Materials. In their roles as directors, Khandros, Marks, and Moritz also signed Berkeley Lights 10-Ks issued during the Class Period (Marks had departed from the Board by the time of the 2021 10-K and so was not a signatory for this one), and as such, were responsible for the content and dissemination of these materials as well.

1           61.     The Control Defendants further exercised control over the Company through the  
2 Board's various standing committees. Throughout the relevant time period, Berkeley Lights's  
3 Board maintained three standing committees, the Audit Committee, Compensation Committee,  
4 and Nominating and Corporate Governance Committee. Each of the standing committees  
5 following the IPO was composed entirely of directors appointed by Control Defendants. Further,  
6 Marks, WRVI's founding managing partner, served on the Audit Committee; Moritz, Sequoia's  
7 managing partner, served on the Compensation Committee and Nominating and Corporate  
8 Governance Committee; and Defendant Khandros served on the Nominating and Corporate  
9 Governance Committee. The Control Defendants' pre-IPO Board designees continue to hold a  
10 majority of the seats on these three standing committees, and Defendants Khandros and Moritz  
11 still serve on the Nominating and Corporate Governance Committee. The committees have  
12 significant responsibilities, including retaining and overseeing auditors, reviewing and approving  
13 internal control procedures, developing and recommending to the Board corporate governance  
14 principles, and reviewing and approving incentive compensation and equity plans.

15           62.     The Control Defendants also had unique insight into the Company's operations  
16 through information rights that they gained as a part of their early investments in the Company,  
17 including the right to visit and inspect the Company's properties and to examine its books of  
18 accounts and records. These were provided for in an Investors' Rights Agreement that the Control  
19 Defendants entered into with Berkeley Lights, which agreement also provided that the Company  
20 would provide monthly, quarterly, and annual unaudited financial statements to the Control  
21 Defendants. In combination with their participation on the Board of Directors, this provided the  
22 Control Defendants with insight about the Company not available to the rest of the investing  
23 public.

24           63.     Similarly, beginning in January 2018, Berkeley Lights entered into a distribution  
25 agreement with Nikon, which, as restated in March 2019, provided that Nikon was the exclusive  
26 distributor of Berkeley Lights products in Japan, Singapore, Thailand and South Korea and a non-  
27 exclusive distributor in China. As the exclusive distributor in Japan, Singapore, Thailand and  
28 South Korea, Nikon was required to purchase a minimum quantity of Berkeley Lights products

1 every six months throughout the term of the distribution agreement. The agreement, which was  
2 set to expire in March 2022, provided Nikon with important insight into Berkeley Lights's  
3 placement of products in Asia, including trends in accounts receivable. Berkeley Lights  
4 considered the Asia Pacific region vital for expanding product growth, and throughout the Class  
5 Period, this geographical market was a growing source of revenue for Berkeley Lights, both in  
6 terms of absolute numbers as well as a percentage of total revenue.

7 64. So, for example, revenues recognized by Berkeley Lights from sales to Nikon  
8 pursuant to its distribution agreement accounted for over 25% of all Berkeley Lights's revenue in  
9 the Asia Pacific market during 2018 and 2019. And revenues recognized from the distribution  
10 agreement with Nikon constituted a growing percentage of the total of all Asia Pacific sales,  
11 making up nearly 40% of the sales in 1Q 2020.

12 65. The Company itself acknowledged the substantial power Defendants WRVI,  
13 Sequoia, Nikon, and Khandros had to direct the affairs of the Company, explaining in the IPO  
14 Prospectus: "Our directors, officers and principal stockholders have significant voting power and  
15 may take actions that may not be in the best interests of our other stockholders."

16 66. The IPO Prospectus continued, providing still more detail about the scope and  
17 nature of the Control Defendants' hold on the Company:

18 After this offering, our executive officers, directors and principal  
19 stockholders each holding more than 5% of our common stock will collectively  
20 control approximately 64% of our outstanding common stock. As a result, these  
21 stockholders [essentially the Control Defendants], if they act together, will be able  
22 to control the management and affairs of our company and most matters requiring  
23 stockholder approval, including the election of directors and approval of significant  
24 corporate transactions. . . . This concentration of ownership may not be in the best  
25 interests of our other stockholders.

26 67. Berkeley Lights made substantially the same disclosures throughout the Class  
27 Period, including in the SPO Prospectus, which explained that the Company's directors, officers  
28 and principal stockholders' continued to own a significant majority (61.13%) of Berkeley Lights  
outstanding stock, and as such, were "able to control the management and affairs of our company  
and most matters requiring stockholder approval."

**C. Events at the Beginning of the Class Period**

68. As discussed, Berkeley's Lights growth and value was dependent on the capabilities and reliability of its platform, and in particular, its flagship instrument Beacon, and placing significant numbers of its platform with customers. But as the Company itself disclosed, prior to the IPO the Company was "still in the very early stages of platform adoption," with an installed base of only 54 units as of March 31, 2020. The Company had even fewer customers, 49, as of March 31, 2020, with a few customers having multiple systems.

69. But the Control Defendants had potentially billions of dollars' worth of illiquid ownership interest that could effectively only be sold on a public market, and in order to liquidate those holdings, the Company needed to go public. Thus, Defendants took the Company public via the IPO and pursuant to a registration statement filed with the SEC on an Amended Form S-1 on July 15, 2020 ("IPO Registration Statement"). The IPO Registration Statement confirmed "[t]he principal purpose of this offering is to create a public market for our common stock and enable access to the public equity markets for us and our stockholders," namely, the Control Defendants, which as explained above held the vast majority of the Company's outstanding stock at the time of the IPO. Granted, the Control Defendants' stock holdings were subject to various restrictions, so they could not be sold immediately after the IPO, but the IPO started the clock on these sale restrictions' expiration. And, as explained in more detail below, the Control Defendants did not waste any time in beginning to offload vast quantities of their stock holdings as soon as they could after the IPO, even receiving an early release from lockup provisions that should have lasted 180 days to dispose of shares in the SPO that followed four short months after the IPO.

70. Accordingly, to attract investors to purchase Berkeley Lights's stock, and permit the Control Defendants to sell their ownership interests, Berkeley Lights and the Individual Defendants had to play up the purportedly groundbreaking nature of the Company's platform, the growth in product placements to date, and prospects for placing still greater numbers of units with customers in the future. For example, financial analysts from J.P. Morgan initiating coverage of Berkeley Lights shortly after the IPO provided an "Overweight" rating for the Company and a price target of \$75 (with the stock closing the day before at \$58.15), which assumed "a unique

1 technology platform that enables significantly accelerated development and commercialization of  
2 biologic drugs and other cell-based products.” The platform was so “disruptive” that J.P. Morgan  
3 did “not see meaningful competitive threat from existing players.” J.P. Morgan analysts further  
4 highlighted the Company’s “large TAM with long runway for market penetration.” Similarly,  
5 analysts from Cowen initiated coverage at the same time with an “Outperform” rating, which was  
6 based on the Company’s “unique and proprietary technology platform that allows users to optimize  
7 cell-based products and manufacturing processes — cutting costs, reducing timelines, improving  
8 ‘hit rates,’ and allowing for more robust/optimal outcomes,” and “already demonstrated robust  
9 growth in its installed base.”

10 71. Thus, despite the relatively small number of the Company’s platforms placed prior  
11 to the IPO, in the IPO Registration Statement, the Company highlighted its “new” platform as  
12 being “the most advanced environment for rapid functional characterization of single cells at scale”  
13 and providing a “level of scale and precision [that] is not attainable with other approaches.”  
14 Similarly, the Company claimed an enormous market opportunity with a total addressable market  
15 of \$23 billion.

16 72. Further, in the lead up to the IPO, Berkeley Lights claimed to be experiencing  
17 revenue growth, in particular in connection with its direct platform sales. IPO Materials stated  
18 that, during fiscal 2019, Berkeley Lights’s direct platform sales had increased 84% year-over-year  
19 to \$39.1 million in sales. Similarly, IPO Materials stated that, during the first quarter of 2020,  
20 Berkeley Lights’s direct platform sales had increased 5% year-over-year to \$9.4 million in sales.  
21 As a result, as the Company explained, “[w]e believe we have established a solid foundation, from  
22 which to drive adoption of our platform across multiple markets.”

23 73. The Company further acknowledged in connection with the IPO that its ability to  
24 drive further adoption of its platform, and in particular, its Beacon instrument, was key: “Our  
25 ability to execute our growth strategy depends upon our ability to increase the adoption of the  
26 Berkeley Lights Platform.” As the company further disclosed: “[a]ny failure to increase  
27 penetration in our existing markets would adversely affect our ability to improve our operating  
28 results.” And, of course, customer adoption was, in turn, dependent on “the relative reliability and

1 robustness of our platform as a whole and the components of our platform,” Beacon being foremost  
2 among these platforms as the principal revenue driver of the Company leading up to the IPO.

3 74. A similar series of events and disclosures played out in the immediate aftermath of  
4 the IPO as the Company positioned itself for the SPO and the Control Defendants began to  
5 liquidate their ownership interest in the Company.

6 75. For example, the Company’s revenue trends purportedly continued after the IPO,  
7 as Berkeley Lights stated that it continued to experience year-over-year increases in its direct  
8 platform sales revenue. On August 25, 2020, Berkeley Lights released its financial results for the  
9 second quarter of 2020, stating that during the quarter the Company had achieved \$7.5 million in  
10 direct platform revenue, a 9% year-over-year increase. And, on November 12, 2020, Berkeley  
11 Lights released its financial results for the third quarter of 2020, stating that during the quarter the  
12 Company had achieved \$12.4 million in direct platform revenue, a 65% sequential increase.  
13 During this time, the price of Berkeley Lights common stock quadrupled from the IPO price,  
14 reaching over \$90 per share on November 12, 2020.

15 76. Then, on November 16, 2020, Berkeley Lights announced it would be conducting  
16 a secondary offering of stock to allow certain insiders to sell their personal Berkeley Lights  
17 shareholdings. In the SPO, several Berkeley Lights insiders, including Control Defendants WRVI,  
18 Nikon, and Khandros and WRVI’s founding managing partner and director of Berkeley Lights,  
19 Michael Marks, sold 3.45 million Berkeley Lights shares to investors at \$86 per share, generating  
20 nearly \$300 million in gross offering proceedings for the selling insiders. The SPO was unusual  
21 not only because of its close proximity to the IPO—which had been conducted less than four  
22 months previously—but also because the underwriters for the IPO had agreed to allow the selling  
23 stockholders to exit their IPO lockup agreements early. Additionally, the selling stockholders, not  
24 Berkeley Lights, would receive all of the proceeds from this offering.



## Global Newswire Posting of Berkeley Lights's SPO Announcement

*\*highlighted emphasis added\**



### Berkeley Lights Announces Pricing of Public Offering by Selling Stockholders

November 18, 2020 23:25 ET | Source: Berkeley Lights, Inc

EMERYVILLE, Calif., Nov. 18, 2020 (GLOBE NEWSWIRE) -- Berkeley Lights, Inc., a leader in Digital Cell Biology, today announced the pricing of its previously announced public offering of 3,000,000 shares of common stock to be sold by certain selling stockholders of Berkeley Lights at a public offering price of \$86.00 per share. In addition, the selling stockholders have granted the underwriters a 30-day option to purchase up to an additional 450,000 shares of common stock. The offering is expected to close on or about November 23, 2020, subject to the satisfaction of customary closing conditions. The selling stockholders will receive all of the net proceeds from the offering. Berkeley Lights will not receive any proceeds from the offering.

J.P. Morgan, Morgan Stanley and Cowen are acting as lead book-running managers for the offering.

A registration statement relating to the shares being sold in this offering by the selling stockholders has been filed with the Securities and Exchange Commission and was declared effective on November 18, 2020. The offering is being made only by means of a prospectus, copies of which may be obtained, when available, from: J.P. Morgan Securities LLC, c/o Broadridge Financial Solutions, 1155

77. The SPO Materials, like with those for the IPO before it, touted the supposed groundbreaking nature of the Berkeley Lights platform, stating, for example, that the platform provides “the most advanced environment for rapid functional characterization of single cells at scale.” The SPO Registration Statement similarly stated that the Berkeley Lights platform delivered “the best cells” and “provides the deepest information, with linked phenotypic and genotypic data, on tens of thousands of live single cells relevant to the customers’ end product specifications.” The SPO Registration Statement also claimed that “this level of scale and precision is not attainable with other approaches.” The SPO Registration Statement described the Berkeley Lights platform as enabling the Company’s customers “to find the best cells” by offering advanced capabilities.

78. The SPO Registration Statement repeated the Company’s financial and operational results provided in Berkeley Lights’s 2Q20 Form 10-Q and 3Q20 Form 10-Q. The SPO Registration Statement also continued to represent that the “total addressable market” for the Company’s products and services was “\$23 billion.”

79. Unbeknownst to the investing public, however, at the time of the IPO and SPO, the Berkeley Lights platform had significant reliability issues and its capabilities fell well short of the groundbreaking technology that the Company had represented to the market. The truth about Berkeley Lights's platform would be revealed in significant part as a result of an investigative analyst report issued by Scorpion Capital in September 2021. As detailed more thoroughly below, the Scorpion Capital Report was based on 24 damning research interviews, including interviews with 14 of Berkeley Lights's largest customers, that described a "trail of customers who allege they were 'tricked,' misled, or over-promised into buying a \$2 million lemon."

### III. DEFENDANTS' FALSE AND MISLEADING STATEMENTS AND OMISSIONS DURING THE CLASS PERIOD

80. The Class Period begins on July 17, 2020. On that date, Berkeley Lights filed with the SEC a prospectus on Form 424B4, which incorporated and formed part of the registration statement for the IPO and was signed by Defendants Hobbs and Holt (the "IPO Registration Statement"). The IPO Registration Statement highlighted the purported superiority of the Berkeley Lights platform compared to existing cell analyzing instruments, stating, for example, that the platform provides "the most advanced environment for rapid functional characterization of single cells at scale." The IPO Registration Statement also stated that the Berkeley Lights platform delivered "the best cells" and "provides the deepest information, with linked phenotypic and genotypic data, on tens of thousands of live single cells relevant to the customers' end product specifications." The IPO Registration Statement also claimed that "this level of scale and precision is not attainable with other approaches." The IPO Registration Statement described the Berkeley Lights platform as enabling the Company's customers "to find the best cells" by offering advanced capabilities, including as follows:

- Performing rapid functional characterization of tens of thousands of single cells in parallel;
- Precisely controlling the environment around each cell, and maintaining cells in a healthy state for further use;
- Accessing a high degree of cell biodiversity;



- 1 • Deep Opto Profiling of the relevant phenotypic characteristics, at  
2 single-cell resolution over time and connecting this to the genotypic  
3 information for each cell;
- 4 • Performing a broad range of workflows, including single-cell  
5 assays, on an integrated platform; and
- 6 • Digitally aggregating, accessing, and analyzing a rich data library  
7 for each single cell.

8 81. The IPO Registration Statement also highlighted Berkeley Lights's purported  
9 operational and financial growth, stating that the Company's direct platform sales had increased  
10 84% year-over-year to \$39.1 million for its fiscal 2019. The IPO Registration Statement stated  
11 that this segment growth had continued in the first quarter of 2020, as the Company generated \$9.4  
12 million in direct platform sales during the quarter, an increase over the first quarter of 2020.  
13 Similarly, the IPO Registration Statement stated that Berkeley Lights had placed 26 machines in  
14 2019, a 117% increase over the prior year, and six machines in the first quarter of 2020, a 20%  
15 increase over the first quarter of 2019. The IPO Registration Statement represented that the "total  
16 addressable market" for the Company's products and services was "\$23 billion."

17 82. Finally, the IPO Registration Statement included the following statement as one of  
18 its "Risk Factors":

19 The Berkeley Lights Platform is comprised of OptoSelect chips and reagent kits,  
20 advanced automation systems and advanced application and workflow software,  
21 which may contain undetected errors or defects and may not meet the expectations  
22 of our customers, which means our business, financial condition, results of  
23 operations and prospects could suffer.

24 83. At the time they were made, the statements in ¶¶ 80-82 were materially false or  
25 misleading because they failed to disclose the adverse facts pertaining to Berkeley Lights's  
26 business, operations, and financial condition, which were known to or deliberately disregarded by  
27 Defendants:

28 (a) that Berkeley Lights's flagship instrument, the Beacon, suffered from  
numerous design and manufacturing defects including breakdowns, high error rates, data integrity  
issues and other problems, limiting the ability of biotechnology companies and research  
institutions to consistently use the machines at scale;

1 (b) that Berkeley Lights had received numerous customer complaints regarding  
2 the durability and effectiveness of the Company's automation systems, including complaints  
3 related to the design and manufacturing detailed in (a), above, and described herein;

4 (c) that the actual market for Berkeley Lights's products and services was a  
5 fraction of the \$23 billion represented to investors because of, inter alia, the relatively high cost of  
6 the Company's instruments and consumables and inability to provide the sustained performance  
7 necessary to justify these high costs;

8 (d) as a result of (a)-(c), above, Defendants' statements to investors during the  
9 Class Period regarding Berkeley Lights's business, operations and financial results were materially  
10 false and misleading.

11 84. On August 25, 2020, Berkeley Lights issued a release providing the Company's  
12 financial and operational results for the quarter ended June 30, 2020 ("2Q20"). The release stated  
13 that Berkeley Lights had achieved total revenue of \$10.6 million during the quarter and made four  
14 platform placements. The release also stated that Berkeley Lights had generated \$7.5 million in  
15 direct platform revenue for the quarter, compared to \$6.9 million for the comparable period in  
16 2019.

17 85. Also on August 25, 2020, Berkeley Lights filed with the SEC its quarterly results  
18 for 2Q20 on Form 10-Q, which was signed by Defendants Hobbs and Holt, who also filed  
19 certifications attesting to the Form 10-Q's accuracy and completeness. The 2Q20 Form 10-Q  
20 contained the financial and operational information contained in the 2Q20 Berkeley Lights release.  
21 The 2Q20 Form 10-Q highlighted the purported capabilities and effectiveness of the Berkeley  
22 Lights platform, stating that the platform "captures and delivers rich single-cell data to find the  
23 best cells" and "allows for a high level of control over live single cells or other micro-objects  
24 throughout the functional characterization process." In addition, the 2Q20 Form 10-Q stated that  
25 the Company had experienced an increase in product revenues during the quarter, stating in  
26 pertinent part as follows:

27 Product revenue increased by \$1.3 million, or 17%, for the three months ended June  
28 30, 2020, compared to the three months ended June 30, 2019. The increase was  
primarily driven by an increase of \$0.8 million in consumables sales driven by

1 additional demand from our customers due to the increase in our installed base as  
 2 well as increased activity by our customers related to the COVID-19 pandemic, an  
 3 increase of \$0.4 million in revenue from direct platform and system sales driven by  
 4 regional mix of the platform placements during the three months ended June 30,  
 2020, including license arrangements related to our workflows, and an increase of  
 \$0.1 million in workflow subscription revenue.

5 86. At the time they were made, the statements in ¶¶ 84-85 were materially false or  
 6 misleading because they failed to disclose the adverse facts pertaining to Berkeley Lights's  
 7 business, operations, and financial condition, which were known to or deliberately disregarded by  
 Defendants:

8 (a) that Berkeley Lights's flagship instrument, the Beacon, suffered from  
 9 numerous design and manufacturing defects including breakdowns, high error rates, data integrity  
 10 issues and other problems, limiting the ability of biotechnology companies and research  
 11 institutions to consistently use the machines at scale;

12 (b) that Berkeley Lights had received numerous customer complaints regarding  
 13 the durability and effectiveness of the Company's automation systems, including complaints  
 14 related to the design and manufacturing detailed in (a), above, and described herein;

15 (c) that the actual market for Berkeley Lights's products and services was a  
 16 fraction of the \$23 billion represented to investors because of, inter alia, the relatively high cost of  
 17 the Company's instruments and consumables and inability to provide the sustained performance  
 18 necessary to justify these high costs; and

19 (d) as a result of (a)-(c), above, Defendants' statements to investors during the  
 20 Class Period regarding Berkeley Lights's business, operations and financial results were materially  
 21 false and misleading.

22 87. On November 12, 2020, Berkeley Lights issued a release providing the Company's  
 23 financial and operational results for the quarter ended September 30, 2020 ("3Q20"). The release  
 24 stated that Berkeley Lights had achieved total revenue of \$18.2 million during the quarter. The  
 25 release also stated that Berkeley Lights had generated \$12.4 million in direct platform revenue for  
 26 the quarter, an increase over the comparable period in 2019.

1           88. That same day, Berkeley Lights held an earnings call to discuss the Company's  
2 3Q20 results hosted by Defendants Hobbs and Holt. During his prepared remarks, Defendant  
3 Hobbs claimed that Berkeley Lights offered "the most advanced environment for functional testing  
4 of live single cells." Defendant Hobbs similarly stated that the Berkeley Lights "platform enables  
5 customers to perform standardized and automated workflows, with precise control over the  
6 environment, which enables functional testing of 10s of thousands of live single cells in parallel."  
7 Defendant Hobbs represented that the Company's machines created "the largest data cube for  
8 single cells in the industry" and that Berkeley Lights was "the only Company commercializing a  
9 platform that can do this in a scalable way." Defendant Hobbs further stated that during "the third  
10 quarter, [the Company] placed 8 platforms of customers, which was up from 4 platforms placed in  
11 the second quarter." Defendant Hobbs also represented that Berkeley Lights was experiencing  
12 numerous tailwinds driving sales growth, stating in pertinent part as follows:

13           We saw an increase in the current revenues, which were up 26% from last quarter  
14 and up 92% year-over-year. Growth over the prior quarter, was seen across all  
15 geographical regions, with Asia leading new platform placements, followed by  
16 Europe and the United States. Revenue was driven by strong demand for the  
17 discovery and development of cell-based products, especially for antibody  
therapeutic workflows. We continue to see capacity expansion in the industry led  
by strong investment activity in the CRO, CDMO space. In addition, the trend of  
increasing functional single-cell characterization continues to gain momentum,  
which is a key driver in our long-term growth strategy and core to our mission at  
Berkeley Lights.

18           89. Also on November 12, 2020, Berkeley Lights filed with the SEC its quarterly  
19 results for 3Q20 on Form 10-Q, which was signed by Defendants Hobbs and Holt, who also filed  
20 certifications attesting to the Form 10-Q's accuracy and completeness. The 3Q20 Form 10-Q  
21 contained the financial and operational information contained in the 3Q20 Berkeley Lights release  
22 and earnings call. The 3Q20 Form 10-Q highlighted the purported capabilities and effectiveness  
23 of the Berkeley Lights platform, stating that the platform "captures and delivers rich single-cell  
24 data to find the best cells" and "allows for a high level of control over live single cells or other  
25 microobjects throughout the functional characterization process." In addition, the 3Q20 Form 10-  
26 Q stated that the Company had experienced an increase in product revenues during the quarter,  
27 stating in pertinent part as follows:  
28

1 Product revenue increased by \$0.9 million, or 7%, for the three months ended  
 2 September 30, 2020, compared to the three months ended September 30, 2019. The  
 3 increase was primarily driven by an increase of \$1.0 million in consumables sales  
 4 driven by additional demand from our customers due to the increase in our installed  
 5 base, as well as workflow subscription revenue of \$0.2 million. This increase was  
 6 offset by a decrease in platform sales of \$0.4 million resulting from the mix of  
 7 system type placed as well as the regional mix of placements. During both of the  
 8 three months ended September 30, 2020 and 2019, we sold 8 platforms.

9 90. At the time they were made, the statements in ¶¶ 87-89 were materially false or  
 10 misleading because they failed to disclose the adverse facts pertaining to Berkeley Lights's  
 11 business, operations, and financial condition, which were known to or deliberately disregarded by  
 12 Defendants:

13 (a) that Berkeley Lights's flagship instrument, the Beacon, suffered from  
 14 numerous design and manufacturing defects including breakdowns, high error rates, data integrity  
 15 issues and other problems, limiting the ability of biotechnology companies and research  
 16 institutions to consistently use the machines at scale;

17 (b) that Berkeley Lights had received numerous customer complaints regarding  
 18 the durability and effectiveness of the Company's automation systems, including complaints  
 19 related to the design and manufacturing detailed in (a), above, and described herein;

20 (c) that the actual market for Berkeley Lights's products and services was a  
 21 fraction of the \$23 billion represented to investors because of, inter alia, the relatively high cost of  
 22 the Company's instruments and consumables and inability to provide the sustained performance  
 23 necessary to justify these high costs; and

24 (d) as a result of (a)-(c), above, Defendants' statements to investors during the  
 25 Class Period regarding Berkeley Lights's business, operations and financial results were materially  
 26 false and misleading.

27 91. On November 19, 2020, Berkeley Lights filed with the SEC a prospectus on Form  
 28 424B4, which incorporated and formed part of the registration statement for the SPO and was  
 signed by Defendants Hobbs and Holt (the "SPO Registration Statement"). The SPO Registration  
 Statement highlighted the purported superiority of the Berkeley Lights platform compared to  
 existing cell analyzing instruments, stating, for example, that the platform provides "the most

1 advanced environment for rapid functional characterization of single cells at scale.” The SPO  
 2 Registration Statement similarly stated that the Berkeley Lights platform delivered “the best cells”  
 3 and “provides the deepest information, with linked phenotypic and genotypic data, on tens of  
 4 thousands of live single cells relevant to the customers’ end product specifications.” The SPO  
 5 Registration Statement also claimed that “this level of scale and precision is not attainable with  
 6 other approaches.” The SPO Registration Statement described the Berkeley Lights platform as  
 7 enabling the Company’s customers “to find the best cells” by offering advanced capabilities,  
 8 including the following:

- 9 • Performing rapid functional characterization of tens of thousands of single cells in  
 10 parallel;
- 11 • Precisely controlling the environment around each cell, and maintaining cells in a  
 12 healthy state for further use;
- 13 • Accessing a high degree of cell biodiversity;
- 14 • Deep Opto Profiling of the relevant phenotypic characteristics, at single-cell  
 15 resolution over time and connecting this to the genotypic information for each cell;
- 16 • Performing a broad range of workflows, including single-cell assays, on an  
 17 integrated platform; and
- 18 • Digitally aggregating, accessing, and analyzing a rich data library for each single  
 19 cell.

20 92. The SPO Registration Statement repeated the Company’s financial and operational  
 21 results provided in Berkeley Lights’s 2Q20 Form 10-Q and 3Q20 Form 10-Q, as detailed above.  
 22 The SPO Registration Statement also represented that the “total addressable market” for the  
 23 Company’s products and services was “\$23 billion.”

24 93. Finally, the SPO Registration Statement included the following statement as one of  
 25 its “Risk Factors”:

26 The Berkeley Lights Platform is comprised of OptoSelect chips and reagent kits,  
 27 advanced automation systems and advanced application and workflow software,  
 28 which may contain undetected errors or defects and may not meet the expectations  
 of our customers, which means our business, financial condition, results of  
 operations and prospects could suffer.

1           94. At the time they were made, the statements in ¶¶ 91-93 were materially false or  
 2 misleading because they failed to disclose the adverse facts pertaining to Berkeley Lights’s  
 3 business, operations, and financial condition, which were known to or deliberately disregarded by  
 4 Defendants:

5                   (a) that Berkeley Lights’s flagship instrument, the Beacon, suffered from  
 6 numerous design and manufacturing defects including breakdowns, high error rates, data integrity  
 7 issues and other problems, limiting the ability of biotechnology companies and research  
 8 institutions to consistently use the machines at scale;

9                   (b) that Berkeley Lights had received numerous customer complaints regarding  
 10 the durability and effectiveness of the Company’s automation systems, including complaints  
 11 related to the design and manufacturing detailed in (a), above, and described herein;

12                   (c) that the actual market for Berkeley Lights’s products and services was a  
 13 fraction of the \$23 billion represented to investors because of, inter alia, the relatively high cost of  
 14 the Company’s instruments and consumables and inability to provide the sustained performance  
 15 necessary to justify these high costs; and

16                   (d) as a result of (a)-(c), above, Defendants’ statements to investors during the  
 17 Class Period regarding Berkeley Lights’s business, operations and financial results were materially  
 18 false and misleading.

19           95. On February 25, 2021, Berkeley Lights issued a release providing the Company’s  
 20 financial and operational results for the quarter and fiscal year ended December 31, 2020  
 21 (“FY20”). The release stated that Berkeley Lights had achieved total revenue of \$21.7 million  
 22 during the quarter and total revenue of \$64.3 million during FY20. The release also stated that  
 23 Berkeley Lights had placed nine platforms during the fourth quarter.

24           96. That same day, Berkeley Lights held an earnings call to discuss the Company’s  
 25 FY20 results hosted by Defendants Hobbs, Wood, and Holt. During the FY20 earnings call,  
 26 Defendant Wood stated that Berkeley Lights was experiencing robust direct platform sales growth,  
 27 stating “direct platform sales totaled \$44.7 million in 2020 and \$15.3 million in the fourth quarter  
 28 of 2020, increasing by 14% and 39% respectively over the prior year periods.” In addition,



1 Defendant Wood stated: “We continue to expand our customer base, with 18 placements coming  
2 from new customers and nine being repeat orders. This brought our install base to 75 systems at  
3 year end, a 56% increase over 2019.”

4 97. At the time they were made, the statements in ¶¶ 95-96 were materially false or  
5 misleading because they failed to disclose the adverse facts pertaining to Berkeley Lights’s  
6 business, operations, and financial condition, which were known to or deliberately disregarded by  
7 Defendants:

8 (a) that Berkeley Lights’s flagship instrument, the Beacon, suffered from  
9 numerous design and manufacturing defects including breakdowns, high error rates, data integrity  
10 issues and other problems, limiting the ability of biotechnology companies and research  
11 institutions to consistently use the machines at scale;

12 (b) that Berkeley Lights had received numerous customer complaints regarding  
13 the durability and effectiveness of the Company’s automation systems, including complaints  
14 related to the design and manufacturing detailed in (a), above, and described herein;

15 (c) that the actual market for Berkeley Lights’s products and services was a  
16 fraction of the \$23 billion represented to investors because of, inter alia, the relatively high cost of  
17 the Company’s instruments and consumables and inability to provide the sustained performance  
18 necessary to justify these high costs; and

19 (d) as a result of (a)-(c), above, Defendants’ statements to investors during the  
20 Class Period regarding Berkeley Lights’s business, operations and financial results were materially  
21 false and misleading.

22 98. On March 12, 2021, Berkeley Lights filed with the SEC its annual report for FY20  
23 on Form 10-K, which was signed by Defendants Hobbs and Holt, who also filed certifications  
24 attesting to the Form 10-K’s accuracy and completeness. The FY20 Form 10-K contained the  
25 financial and operational information contained in the FY20 Berkeley Lights release and earnings  
26 call. The FY20 Form 10-K highlighted the purported capabilities and effectiveness of the Berkeley  
27 Lights platform, stating that the platform “captures and delivers rich single-cell data to find the  
28 best cells” and “allows for a high level of control over live single cells or other micro-objects



1 throughout the functional characterization process.” In addition, the FY20 Form 10-K stated that  
 2 the Company had experienced an increase in product revenues during the quarter, stating in  
 3 pertinent part as follows:

4 Product revenue increased by \$8.1 million, or 19% for the year ended December  
 5 31, 2020, compared to the year ended December 31, 2019. The increase during the  
 6 year ended December 31, 2020 compared to December 31, 2019, was primarily  
 7 driven by an increase of \$3.8 million in consumables sales driven by additional  
 8 demand from our customers due to the increase in our installed base, an increase of  
 9 \$3.3 million from platform and system sales, including sales-type lease  
 10 arrangements and license arrangements related to our workflows, and an increase  
 11 of \$1.0 million in subscription arrangement and related revenue driven by the  
 12 launch of our subscription access program in February 2020. During the year ended  
 13 December 31, 2020 we sold 27 platforms compared to 26 platforms during the year  
 14 ended December 31, 2019. Revenue from platform and system sales in the year  
 15 ended December 31, 2020 as compared to the prior year was impacted by the  
 16 regional mix of the platform placements as well as the mix of system type placed.

17 99. Finally, the FY20 Form 10-K included the following statement as one of its “Risk  
 18 Factors”:

19 The Berkeley Lights Platform is comprised of OptoSelect chips and reagent kits,  
 20 advanced automation systems and advanced application and workflow software,  
 21 which may contain undetected errors or defects and may not meet the expectations  
 22 of our customers, which means our business, financial condition, results of  
 23 operations and prospects could suffer.

24 100. At the time they were made, the statements in ¶¶ 98-99 were materially false or  
 25 misleading because they failed to disclose the adverse facts pertaining to Berkeley Lights’s  
 26 business, operations, and financial condition, which were known to or deliberately disregarded by  
 27 Defendants:

28 (a) that Berkeley Lights’s flagship instrument, the Beacon, suffered from  
 numerous design and manufacturing defects including breakdowns, high error rates, data integrity  
 issues and other problems, limiting the ability of biotechnology companies and research  
 institutions to consistently use the machines at scale;

(b) that Berkeley Lights had received numerous customer complaints regarding  
 the durability and effectiveness of the Company’s automation systems, including complaints  
 related to the design and manufacturing detailed in (a), above, and described herein;

(c) that the actual market for Berkeley Lights’s products and services was a  
 fraction of the \$23 billion represented to investors because of, inter alia, the relatively high cost of

1 the Company's instruments and consumables and inability to provide the sustained performance  
2 necessary to justify these high costs; and

3 (d) as a result of (a)-(c), above, Defendants' statements to investors during the  
4 Class Period regarding Berkeley Lights's business, operations and financial results were materially  
5 false and misleading.

6 101. On May 11, 2021, Berkeley Lights issued a release providing the Company's  
7 financial and operational results for the quarter ended March 31, 2021 ("1Q21"). The release  
8 stated that Berkeley Lights had achieved total revenue of \$18.6 million for the first quarter of 2021,  
9 representing 35% growth year over year.

10 102. On the same day, Berkeley Lights filed with the SEC its quarterly results for 1Q21  
11 on Form 10-Q, which was signed by Defendants Hobbs and Wood, who also filed certifications  
12 attesting to the Form 10-Q's accuracy and completeness. The 1Q21 Form 10-Q contained the  
13 financial and operational information contained in the 1Q21 Berkeley Lights release and earnings  
14 call. The 1Q21 Form 10-Q highlighted the purported capabilities and effectiveness of the Berkeley  
15 Lights platform, stating that the platform "captures and delivers rich single-cell data to find the  
16 best cells" and "allows for a high level of control over live single cells or other micro-objects  
17 throughout the functional characterization process." In addition, the 1Q21 Form 10-Q stated that  
18 the Company had experienced an increase in product revenues during the quarter, stating in  
19 pertinent part as follows:

20 Product revenue increased by \$2.9 million, or 27%, for the three months ended  
21 March 31, 2021, compared to the three months ended March 31, 2020. The increase  
22 was primarily driven by strong demand from the Antibody Therapeutics market,  
23 resulting in an increase of \$1.4 million from platform and system sales, including  
24 sales-type lease arrangements and license arrangements related to our workflows,  
25 an increase of \$1.1 million in consumables sales driven by additional demand from  
26 our customers due to the increase in our installed base, and an increase of \$0.4  
27 million in subscription arrangement and related revenue driven by the launch of our  
28 subscription access program in 2020. During the three months ended March 31,  
2021, we sold eight platforms, including placements associated with subscription  
arrangements, as compared to the three months ended March 31, 2020 in which we  
sold six platforms.

103. That same day, Berkeley Lights held an earnings call to discuss the Company's  
1Q21 results hosted by Defendants Hobbs and Wood. During the 1Q21 earnings call, Defendant

1 Hobbs stated that Berkeley Lights was experiencing “strong” demand “for both new and existing  
2 customers. Such demand was in part driven “by offering alternative access models to  
3 accommodate customers through a subscription-based approach.” Hobbs also stated that Berkeley  
4 Lights intended to introduce a second subscription model “to better meet their specific capacity  
5 needs. In this model, customers will subscribe to a given capacity inclusive of all consumables,  
6 software, service and support for their Cell Line Development or antibody discovery campaigns.”  
7 The purpose of each of these subscription models, Hobbs told investors, was to “increase [their]  
8 served available market, broaden [their] customer base and drive incremental demand.”

9 104. On the same conference call, Defendant Wood stated, “We continue to expect  
10 revenue to be in the range of \$90 to \$100 million . . . . [W]e expect revenues to be more heavily  
11 weighted to the back half of the year, as more business development collaborations and  
12 partnerships come online and as a result of the seasonality we typically experience in the fourth  
13 quarter.” He continued, regarding the new subscription model:

14 This offering will recognize revenue over the subscription term compared to the  
15 upfront recognition of a typical equipment sale. As we ramp this offering, it is  
16 possible that some previously anticipated CapEx sales may transition to a  
subscription offering. This could impact quarterly revenues in the near-term, but  
in turn would provide upside to recurring and overall revenues in future periods.

17 105. At the time they were made, the statements in ¶¶ 101-04 were materially false or  
18 misleading because they failed to disclose the adverse facts pertaining to Berkeley Lights’s  
19 business, operations, and financial condition, which were known to or deliberately disregarded by  
20 Defendants:

21 (a) that Berkeley Lights’s flagship instrument, the Beacon, suffered from  
22 numerous design and manufacturing defects including breakdowns, high error rates, data integrity  
23 issues and other problems, limiting the ability of biotechnology companies and research  
24 institutions to consistently use the machines at scale;

25 (b) that Berkeley Lights had received numerous customer complaints regarding  
26 the durability and effectiveness of the Company’s automation systems, including complaints  
27 related to the design and manufacturing detailed in (a), above, and described herein;

1 (c) that the actual market for Berkeley Lights's products and services was a  
2 fraction of the \$23 billion represented to investors because of, inter alia, the relatively high cost of  
3 the Company's instruments and consumables and inability to provide the sustained performance  
4 necessary to justify these high costs;

5 (d) Berkeley Lights's new subscription models were exposing the Beacon's  
6 weaknesses to new customers, and, because of the Beacon's repeated material failures, those  
7 customers were unlikely to become long term subscription or platform customers of Berkeley  
8 Lights;

9 (e) Berkeley Lights's subscription customers were coming at the expense of  
10 platform customers because smaller customers were choosing the subscription model over the  
11 Beacon's \$2m platform price tag, thus subscription offerings were not "increasing the available  
12 market" or "broadening the customer base;" and

13 (f) as a result of (a)-(e), above, Defendants' statements to investors during the  
14 Class Period regarding Berkeley Lights's business, operations and financial results were materially  
15 false and misleading.

16 106. On August 11, 2021, Berkeley Lights issued a release providing the Company's  
17 financial and operational results for the quarter ended June 30, 2021 ("2Q21"). The release stated  
18 that Berkeley Lights had achieved total revenue of \$19.3 million for the second quarter of 2021,  
19 representing 82% growth year over year.

20 107. On the same day, Berkeley Lights filed with the SEC its quarterly results for 2Q21  
21 on Form 10-Q which was signed by Defendants Hobbs and Wood, who also filed certifications  
22 attesting to the Form 10-Q's accuracy and completeness. The 2Q21 Form 10-Q contained the  
23 financial and operational information contained in the 2Q21 Berkeley Lights release and earnings  
24 call. The 2Q21 Form 10-Q highlighted the purported capabilities and effectiveness of the Berkeley  
25 Lights platform, stating that the platform "is a fully integrated, end-to-end solution, comprised of  
26 proprietary consumables, including our OptoSelect chips and reagent kits, advanced automation  
27 systems and advanced application and workflow software." In addition, the 2Q21 Form 10-Q  
28

1 stated that the Company had experienced an increase in product revenues during the quarter,  
2 stating in pertinent part as follows:

3 Product revenue increased by \$3.9 million, or 43%, for the three months ended June  
4 30, 2021, compared to the three months ended June 30, 2020. The increase was  
5 primarily driven by strong demand across our markets, especially from the  
6 Antibody Therapeutics, Gene and Cell Therapy market, resulting in an increase of  
7 \$3.4 million from platform and system sales, including sales-type lease  
8 arrangements and license arrangements related to our workflows, an increase of  
9 \$0.2 million in consumables sales driven by additional demand from our customers  
due to the increase in our installed base, and an increase of \$0.3 million in  
subscription arrangement and related revenue driven by the launch of our  
subscription access program in 2020. During the three months ended June 30, 2021,  
we placed seven platforms as compared to the three months ended June 30, 2020 in  
which we placed in total four platforms.

10 108. That same day, Berkeley Lights held an earnings call to discuss the Company's  
11 2Q21 results hosted by Defendants Hobbs and Wood. During the 2Q21 earnings call, Defendant  
12 Hobbs, in response to a question about "new units coming offline at customer locations, stated  
13 "We're seeing customers are utilizing the tools and they have not decommissioned them."

14 109. On the same conference call, Defendant Wood stated, regarding the genesis of the  
15 subscription platform:

16 So, we tailored this to folks that need to run between 5 and 10 campaigns a year,  
17 which obviously is significantly less than what the Beacon is capable of. And the  
18 intent there was to attract that customer to the Berkeley Lights Platform that  
19 otherwise would have -- went to an alternative solution, whether that's been a CRO  
or to build out the lab space that they needed to do it manually and house with that.  
So, the design here was to price an all-in package that included the tool, the  
software, the service and the consumables and a very simple price per campaign,  
easy to sell, goes through an OpEx budget versus the CapEx budget type of a model.

20 110. Also on the August 11 conference call, one analyst asked, "[J]ust on the guidance  
21 here, 90 to 100 [million in total revenue for the year]. So you did roughly \$38 million, I think, in  
22 the first half. So, to the midpoint of the guidance, it is a decent step up in the second half. And  
23 you've got this changing model a little bit going on here. So, can you just give us some thoughts  
24 on the confidence in your ability to hit that guidance . . . ?"

25 111. In response, Defendant Wood continued to paint a rosy picture of the Company and  
26 reiterated the revenue guidance for the year of \$90 to 100 million. Wood explained that the second  
27 half of the year would see an uptick in revenue as a result of usual seasonality further augmented  
28 by a couple of factors:

1 “[O]n the first half versus second half split that you talked about, if you were to  
2 look historically over the last couple of years, it’s been relatively that same profile,  
3 first half and second half. I will say that this year, we expect Q4 to be a slightly  
4 higher percentage than what it may have been. And that’s primarily a function as  
you ramp up on some of these business development deals like the Bayer that we  
talked about as well as getting the TechAccess [subscription model] more rolled  
out and we get more kind of on that recurring revenue base on there.”

5 Wood continued, emphasizing the early success of the Company’s new TechAccess  
6 subscription model: “And that program is off to a good start with getting three contracts signed in  
7 the first few months of that being launched.”

8 112. At the time they were made, the statements in ¶¶ 106-11 were materially false or  
9 misleading because they failed to disclose the adverse facts pertaining to Berkeley Lights’s  
10 business, operations, and financial condition, which were known to or deliberately disregarded by  
11 Defendants:

12 (a) that Berkeley Lights’s flagship instrument, the Beacon, suffered from  
13 numerous design and manufacturing defects including breakdowns, high error rates, data integrity  
14 issues and other problems, limiting the ability of biotechnology companies and research  
15 institutions to consistently use the machines at scale;

16 (b) that Berkeley Lights had received numerous customer complaints regarding  
17 the durability and effectiveness of the Company’s automation systems, including complaints  
18 related to the design and manufacturing detailed in (a), above, and described herein;

19 (c) that the actual market for Berkeley Lights’s products and services was a  
20 fraction of the \$23 billion represented to investors because of, inter alia, the relatively high cost of  
21 the Company’s instruments and consumables and inability to provide the sustained performance  
22 necessary to justify these high costs;

23 (d) Berkeley Lights’s new subscription models were exposing the Beacon’s  
24 weaknesses to new customers, and, because of the Beacon’s repeated material failures, those  
25 customers were unlikely to become long term subscription or platform customers of Berkeley  
26 Lights;

27 (e) Berkeley Lights’s subscription customers were coming at the expense of  
28 platform customers because smaller customers were choosing the subscription model over the

1 Beacon's \$2m platform price tag, thus subscription offerings were not "increasing the available  
2 market" or "broadening the customer base;"

3 (f) Berkeley Lights's year end revenue guidance was unachievable as it would  
4 require all-time record revenue in Q3 and Q4 just to hit the low-end of guidance, a minimum of  
5 \$26 million per quarter, or an almost 40% increase over its revenue reported for the first two  
6 quarters of the year, and the Company itself acknowledged subscription placements would put  
7 downward pressure on revenue in the second half;

8 (g) Berkeley Lights' partnership agreements were a stop gap necessitated by  
9 the Beacon's weaknesses and shifted the burden of using the cumbersome and error-prone machine  
10 to Berkeley Lights, as opposed to its customers; and

11 (h) as a result of (a)-(f), above, Defendants' statements to investors during the  
12 Class Period regarding Berkeley Lights's business, operations and financial results were materially  
13 false and misleading.

14 113. On November 4, 2021, Berkeley Lights issued a release providing the Company's  
15 financial and operational results for the quarter ended September 30, 2021 ("3Q21"). The release  
16 stated that Berkeley Lights had achieved total revenue of \$24.3 million for the third quarter of  
17 2021, representing 34% growth year over year.

18 114. On the same day, Berkeley Lights filed with the SEC its quarterly results for 3Q21  
19 on Form 10-Q which was signed by Defendants Hobbs and Wood, who also filed certifications  
20 attesting to the Form 10-Q's accuracy and completeness. The 3Q21 Form 10-Q contained the  
21 financial and operational information contained in the 3Q21 Berkeley Lights release and earnings  
22 call. The 3Q21 Form 10-Q highlighted the purported capabilities and effectiveness of the Berkeley  
23 Lights platform, stating that the platform "is a fully integrated, end-to-end solution, comprised of  
24 proprietary consumables, including our OptoSelect chips and reagent kits, advanced automation  
25 systems and advanced application and workflow software." Regarding the Scorpion Capital  
26 Report, in Item 1A the 10-Q added a risk factor relating to the business and strategy that "changes  
27 in financial estimates or recommendations by securities analysts, as well as publications from  
28



1 research analysts associated with short selling, such as was published about us in Q3 2021” could  
2 harm Berkeley Lights’s share price.

3 115. That same day, Berkeley Lights held an earnings call to discuss the Company’s  
4 3Q21 results hosted by Defendants Hobbs and Wood. During the 3Q21 earnings call, Defendant  
5 Hobbs stated regarding the Scorpion Capital Report:

6 [W]e had multiple repeat purchases in the quarter post the short report being  
7 published. But on the bright side, the report has further cemented the strong  
8 relationships we have with our customers. Many have offered to continue to  
9 provide broad support towards Berkeley Lights. So in general, the customer  
10 response has been very positive as we move forward. So I think, in general, we  
11 have not seen a dramatic impact from the Scorpion short report.”

12 116. On the same conference call, in response to a question regarding Berkeley Lights  
13 iterating financial guidance at the lower end of the previously stated range, despite an ostensibly  
14 “strong” quarter, Defendant Wood stated, “[W]e expect it to be a little bit at the lower end of that  
15 range as we were successful with what we’re doing on the business. So nothing really there.” He  
16 continued, “[E]ach tool, you’re selling \$1.5 million to \$2 million. So one timing moving in and  
17 out of a quarter can have a material impact. So that’s more what we’re saying in that narrow range  
18 there.”

19 117. At the time they were made, the statements in ¶¶ 113-16 were materially false or  
20 misleading because they failed to disclose the adverse facts pertaining to Berkeley Lights’s  
21 business, operations, and financial condition, which were known to or deliberately disregarded by  
22 Defendants:

23 (a) that Berkeley Lights’s flagship instrument, the Beacon, suffered from  
24 numerous design and manufacturing defects including breakdowns, high error rates, data integrity  
25 issues and other problems, limiting the ability of biotechnology companies and research  
26 institutions to consistently use the machines at scale;

27 (b) that Berkeley Lights had received numerous customer complaints regarding  
28 the durability and effectiveness of the Company’s automation systems, including complaints  
related to the design and manufacturing detailed in (a), above, and described herein;

1 (c) that the actual market for Berkeley Lights's products and services was a  
 2 fraction of the \$23 billion represented to investors because of, inter alia, the relatively high cost of  
 3 the Company's instruments and consumables and inability to provide the sustained performance  
 4 necessary to justify these high costs;

5 (d) that the high error rates, repeated equipment malfunctions, and dissatisfied  
 6 customers documented in the Scorpion Capital Report were true, and had a material effect on the  
 7 successful growth of Berkeley Lights, and

8 (e) as a result of (a)-(d), above, Defendants' statements to investors during the  
 9 Class Period regarding Berkeley Lights's business, operations and financial results were materially  
 10 false and misleading.

11 118. As a result of Defendants' wrongful acts and omissions, and the decline in the price  
 12 of Berkeley Lights common shares detailed herein, Plaintiffs and other members of the Class have  
 13 suffered significant losses and damages.

#### 14 15 **IV. DISCLOSURE OF DEFENDANTS' SCHEME TO DEFRAUD**

16 119. The Company revealed the truth of the underlying and long-standing issues with  
 17 the Berkeley Lights platform through the series of partial corrective disclosures identified below,  
 18 beginning at the start of 2021 as product placements and revenue slumped and the Company  
 19 attempted to prop up its unit placements through the introduction of another subscription model:

##### 20 **A. Defendants Reaffirm 2021 Targets in 1Q21 in the Face of Revenue and Sales** 21 **Headwinds, including Placing Fewer Units than Previous Quarters**

22 120. The truth began to emerge nearly six months after the November 2020 SPO. On  
 23 May 11, 2021, Berkeley Lights issued an earnings release announcing its 1Q 2021 results, filed its  
 24 Form 10-Q, and held an earnings call. While the Company reaffirmed its prior guidance for  
 25 expected total revenues between \$90 to 100 million for the full year 2021, signs of poor product  
 26 placement and limited adoption of expanded use cases for the Beacon began to show—tell-tale  
 27 indicators that the Beacon could not meet the lofty promises made by the Company.

121. To begin with, Berkeley Lights only sold eight platforms during the quarter, down from the prior quarter (9 placed in 4Q 2020) and equal to the number sold in 3Q 2020. With “at a minimum” 45 total placements promised for 2021, Berkeley Lights had to average over twelve units sold in each of the remaining three quarters to reach its target, more units sold per-quarter in three consecutive quarters than in any other single quarter in the history of the Company. Further, while the Company highlighted \$18.6 million in revenue for the quarter, representing 35% growth year over year, this was a 14% drop in revenue compared to the prior quarter.

122. Also, the Company introduced a new subscription model for its products that was intended to bolster its stagnant direct sales. The new subscription model was notable for a few reasons.

123. First, Berkeley Lights introduced the new model right on the heels of the introduction of another subscription model. The Company introduced the prior model a little over a year earlier in February 2020 with similar promises that it would “enable broader customer access,” particularly among potential customers “with lower capacity requirements.” Yet, by May 2021, the prior model had floundered, with a single subscription placement in each of the prior two quarters, and the Company pivoted to offer yet another subscription model.

124. But what was true of the new subscription model was also true of the former, and as one analyst from Morgan Stanley questioned the Company during the earnings call, the likelihood of a customer willing to pay \$1.5 to \$2 million for a Beacon switching to the subscription model seemed unlikely. During the earnings call, Berkeley Lights tried to allay these fears, explaining that the subscription program would drive new adoption as it was focused on customers with fewer campaign runs and pricing based on campaign capacity. Essentially, Berkeley Lights was slashing prices, a troubling sign for a product that the Company had sold investors on as providing “the most advanced environment for rapid functional characterization of single cells at scale”—or as Defendant Hobbs explained during the May 11 earnings call, “Berkeley Lights does functional validation or test better than anybody else.”

125. The new subscription model was unlikely to drive incremental sales, and instead, as the Company itself acknowledged, would only lead to cannibalization of placements, as

1 potential customers chose the cheaper and less risky option with the Berkeley Lights platform.  
2 This possibility was all but confirmed by Berkeley Lights's maintaining its guidance on total  
3 expected revenue for 2021 despite the introduction of the new subscription model.

4 126. The announcement of the new subscription model also begged the question of why  
5 these new, low-capacity customers were included among the potential 1,600 customers and \$23  
6 billion TAM that Berkeley Lights announced in connection with the IPO and SPO. These  
7 companies, with small operating budgets, were never going to be able to afford a \$2 million  
8 Beacon. Yet, as Berkeley Lights described, they were now part of the Company's "served [or  
9 serviceable] available market" with the introduction of the new subscription model.

10 127. In response to the May 11, 2021 news, the Company's stock price fell from a  
11 closing price of \$45.54 per share on May 10, 2021 to a closing price of \$43.13 on May 11, 2021  
12 on trading volume of more than 2.5 million shares. The May 11 share price drop reflected a market  
13 capitalization loss of over \$140 million, and a 5.3% decline from Berkeley Lights's closing price  
14 on May 10, 2021.

15 128. As the market continued to digest the news, Berkeley Lights's share price continued  
16 to fall over the next two days, closing at \$39.53 per share on May 12, 2021 and \$36.40 on May  
17 13, 2021. This was an additional 8.3% decline on May 12 and 7.9% decline on May 13. Berkeley  
18 Lights lost another \$449 million in market capitalization over the two days.

19 **B. Defendants Released Poor Results for a Second Consecutive Quarter in**  
20 **2Q21, with Fewer Units Placed than in any Quarter from the Prior Year**

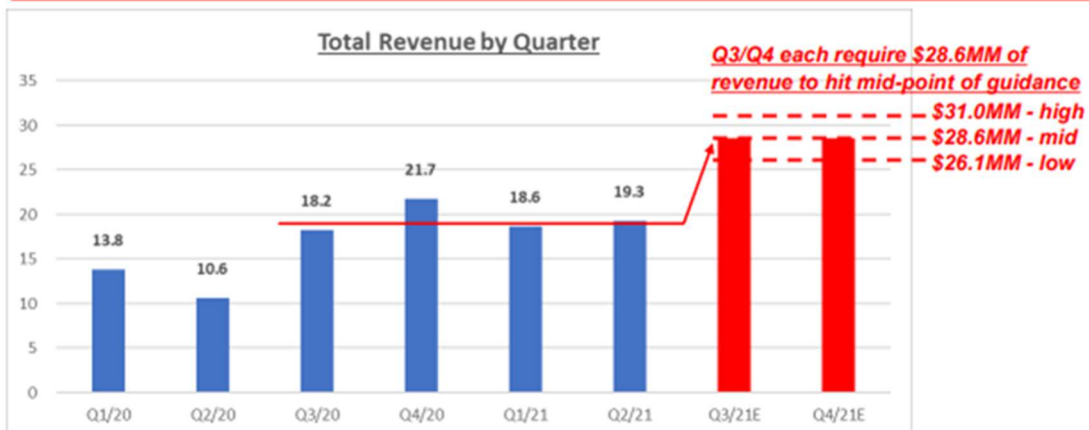
21 129. The truth about the Berkeley Lights platform continued to leak to the market when,  
22 just a few months later, the Company disclosed poor financial results for 2Q21. On August 11,  
23 2021, Berkeley Lights issued an earnings release announcing its 2Q21 results, filed its Form 10-  
24 Q, and held an earnings call, again posting disappointing results and missing revenue marks for  
25 the quarter. Revenue for the quarter fell slightly below projections and the Company placed a  
26 dismal seven units for the quarter. The units placed declined from the prior quarter (8), which  
27 already was the low mark over the preceding three quarters (8, 9, and 8 units placed in 1Q21,  
28 4Q20, and 3Q20, respectively). With only fifteen units placed through the first half of the year,

the Company needed to sell 30 units (or two-thirds of all units) over the second half of the year to meet its expected (“at a minimum”) 45 units sold in 2021. Further, the revenue for the quarter (\$19.3 million) was essentially flat with 1Q21 revenue, signaling the Company’s growth prospects were deteriorating.

130. The quarter’s shortcomings were not lost on analysts that questioned Berkeley Lights’s ability to meet projections for the second half of the year. As one analyst asked during the earnings call, “just on the guidance here, 90 to 100 [million in total revenue for the year]. So you did roughly \$38 million, I think, in the first half. So, to the midpoint of the guidance, it is a decent step up in the second half. And you’ve got this changing model a little bit going on here. So, can you just give us some thoughts on the confidence in your ability to hit that guidance . . . ?” To meet the year-end revenue guidance, Berkeley Lights needed two unprecedented quarters in a row just to hit the low-end of guidance, a minimum of \$26 million per quarter, or an almost 40% increase over its revenue reported for the first two quarters of the year. This was especially problematic given that Defendant Wood noted in response to the above question that subscription placements in the second half would put downward pressure on revenue: “the more subscription we do, as we talked about in the last call, the closer to the lower end of the range will be.” The below chart from the Scorpion Capital Report illustrates well the dire situation facing Berkeley Lights in August 2021.

**Excerpt From Scorpion Capital Report (p. 28) regarding BLI’s 2021 Guidance**

***BLI 2021 guidance of \$90-100MM requires all-time record revenue in Q3 and Q4 – an implausibly sharp spike from a flat trend. “Back half weighted” is the usual canard of companies about to miss.***



Source: Scorpion Capital analysis and estimates; BLI SEC filings and press releases; Capital IQ data

1           131. On this news, the Company's stock price fell over 9.5% from \$43.79 per share at  
2 close on August 10, 2021 to \$39.65 per share at close on August 11, 2021. There was heavy  
3 Berkeley Lights trading volume during the day, with over 2 million shares changing hands. The  
4 August 11 share price decline resulted in a loss of \$261.3 million in market capitalization for the  
5 Company.

6           132. Berkeley Lights worked hard to downplay any concerns, however, and as explained  
7 above in ¶¶ 106-12, Defendant Wood kicked the revenue can down the road. The Company again  
8 reiterated its revenue guidance for the year, explaining that it believed an uptick was coming partly  
9 as a result of the new subscription offering and the ramp up in partnership agreements, including  
10 a recently announced partnership agreement with Bayer, as well as usual seasonal differences with  
11 more heavily weighted past fourth quarters.

12           133. The Company really emphasized the new Bayer deal, for which Berkeley Lights  
13 issued a separate press release on the same day. As Defendant Hobbs explained during the analyst  
14 call, "[t]he Bayer deal is another step into offering high-throughput functional screening services  
15 at Berkeley Lights." Curiously, the Bayer deal was not with the German pharmaceutical giant for  
16 use in developing a drug or other therapeutic for use in humans, but a small, U.S. based agricultural  
17 division of Bayer.

18           134. Of course, the Company did not let on about the consistent failures of its platform  
19 and customer dissatisfaction with its capabilities, or otherwise explain why, despite the Company's  
20 dependence on unit placement, it was touting new service business through partnerships like that  
21 with Bayer that involved no product placements. Nor did the Company explain how Defendant  
22 Wood could say in the same breath that revenue would tick up in the second half of 2021 due in  
23 part to the ramp up of its subscription offering, while also noting that subscription placements  
24 would put downward pressure on revenue in the second half.

25           135. These efforts to downplay any concerns partially succeeded in maintaining the  
26 artificial inflation in the price of Berkeley Lights's securities, as analysts generally issued positive  
27 reports following the call and emphasized the prospects of the Company's new strategic  
28 partnerships.

**C. Scorpion Capital Issued a Scathing Investigative Report Uncovering the Breadth of the Issues with Berkeley Lights’s Platform and the Company’s Many Efforts to Conceal Those Issues**

136. On September 15, 2021, research analyst firm Scorpion Capital issued a scathing investigative report, titled “Fleecing Customers And IPO Bagholders With A \$2 Million Black Box That’s A Clunker, While Insiders and Silicon Valley Bigwigs Race To Dump Stock. Just Another VC Pump at 27X Sales. Target Price: \$0,” which criticized Berkeley Lights’s technology and questioned the sustainability of the Company’s most important business relationships and its business growth plan (the “Scorpion Capital Report”). Although Scorpion Capital stated it was short Berkeley Lights, the information contained in the Scorpion Capital Report was purportedly based on extensive proprietary research and analysis, including 24 research interviews with former Berkeley Lights employees, industry scientists and end users across 14 of the Company’s largest customers. The Scorpion Capital Report detailed a “trail of customers who allege they were ‘tricked,’ misled, or over-promised into buying a \$2 million lemon” and concluded that the “reality is so far from BLI’s grandiose hype that we believe its product claims and practices may constitute outright fraud.”

137. Examples from witness interviews detailed in the Scorpion Capital Report include, inter alia: (i) an Amgen employee who stated that Berkeley Lights machines had an error rate 50% higher than standard lab equipment; (ii) a Bristol Myers Squibb employee who described the machines as onerous and unusable and a waste of money; (iii) a Pfizer senior scientist who implied that the Company’s key product claims and capabilities are false; (iv) a Novartis ex-manager who described the products as a farce that do not work; and (v) an AbbVie scientist who stated that in their experience 40% to 50% of all cells were ruined during runs on the Berkeley Lights machines. In total, the Scorpion Capital Report claimed to have interviewed customers representing 30% to 50% of Berkeley Lights’s entire installed base and that “[a]ll 14 customers indicated that BLI’s machine is a flop” and that the authors could not “recall hearing feedback as scathing and universal during customer checks.” Problems cited in the Scorpion Capital Report included the fact that the Company’s instruments were not robust enough for commercial use and frequently broke down,

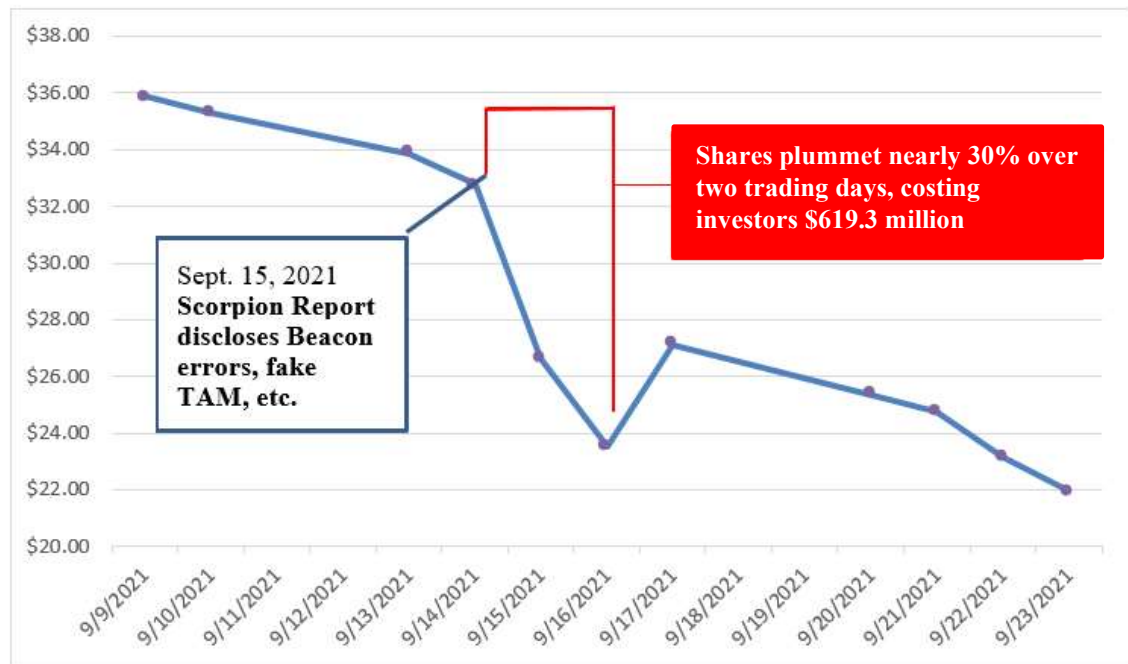


1 were prone to contamination, suffered from throughput limitations, were plagued by data integrity  
2 issues, and experienced repeated software problems.

3       138. In addition, the Scorpion Capital Report found “virtually every” ex-employee  
4 interviewed had described Berkeley Lights’s total addressable market as “negligible,” with one  
5 describing the addressable market claimed by the Company in its communications to investors as  
6 “ridiculous.” The Scorpion Capital Report concluded that only a relatively small number of  
7 biotech companies could afford the relatively expensive machines produced by Berkeley Lights  
8 and that most of these had already made a purchase. In addition, the Scorpion Capital Report  
9 found that negative customer experiences had further crimped the Company’s growth potential.  
10 According to the Scorpion Capital Report, the availability of cheaper and better alternatives  
11 compounded the problem. The Scorpion Capital Report stated that Berkeley Lights was  
12 experiencing anemic or even declining product sales and growth and had been forced to move into  
13 bespoke projects and subscription-based offerings in order to “scrape together enough shards of  
14 revenue to try and keep the story going while insiders dump stock.” The Scorpion Capital Report  
15 estimated the Company’s actual total addressable market based on interviews with former  
16 Berkeley Lights employees to be only \$400 million to \$600 million.

17       139. The price of Berkeley Lights common stock plummeted on the information  
18 revealed in the Scorpion Capital Report, falling nearly 30% over two trading days to close at  
19 \$23.53 on September 16, 2021, on trading volume of over 22 million shares. The Company lost  
20 \$619.3 million in market capitalization as a result of the two-day share price decline.

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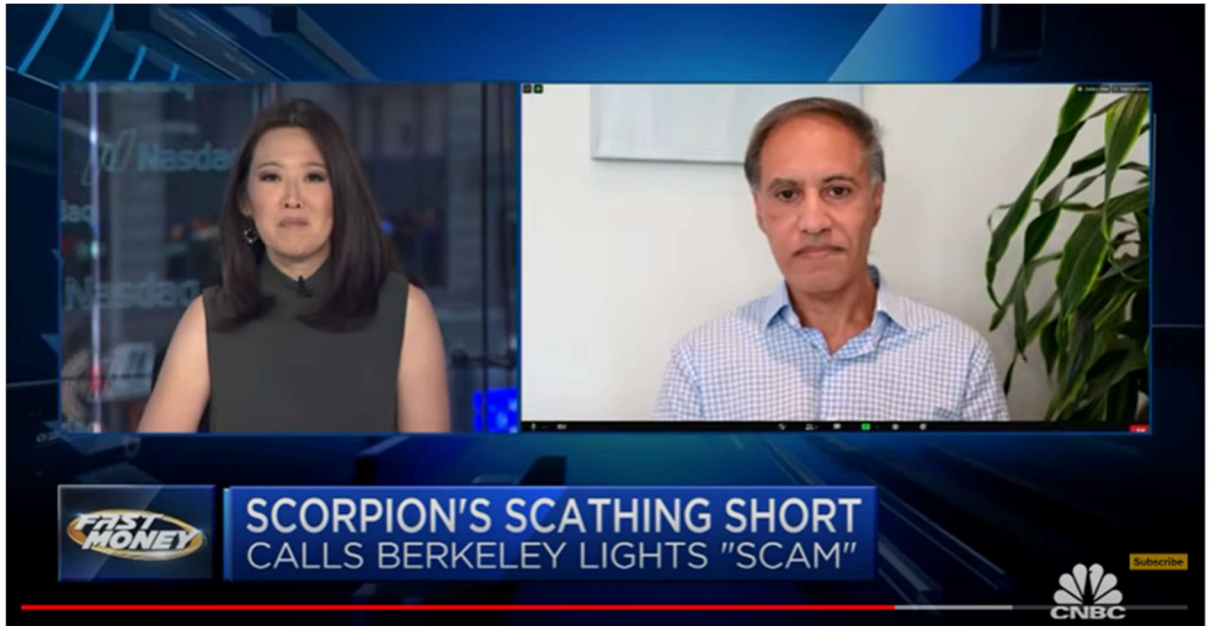
**BLI Stock Price After Scorpion Capital Report Publication**

140. The scope and specificity of the Scorpion Capital Report bolstered its credibility, with the report describing itself as the “most in-depth due diligence to date” on the Company. Certain aspects of the Scorpion Capital Report were also generally corroborated by available public information, including the Company’s relatively flat sales of its flagship Beacon instruments, alarming increase in accounts receivables, and move into more subscription-based and bespoke product offerings. Moreover, the fact that the price of Berkeley Lights common stock plummeted on the publication of the Scorpion Capital Report and failed to recover even after Berkeley Lights responded to the report indicates that the market found the Scorpion Capital Report’s allegations credible and directly contrary to Defendants’ prior representations to investors.

141. More specifically, Berkeley Lights issued its response to the Scorpion Capital Report the day after the report was issued, making a statement on the September 16, 2021 airing of CNBC’s Fast Money. The statement was read by the host of the program as a part of a segment focusing on Berkeley Lights and featuring an extended interview of Scorpion Capital’s founder, Kir Khalon, about the report issued the day prior. During the interview, Mr. Khalon reiterated all

the major points of the Scorpion Capital Report and addressed questions about the credibility of the report, including its reliance on former employees of Berkeley Lights, who as the host of the show pointed out may have an axe to grind or may only have outdated information about the Company.

**Screenshot from CNBC Interview with Scorpion Capital Founder Khalon**



142. Mr. Khalon explained, “The heart of the report [] is that we talked to fourteen of Berkeley Lights largest customers. . . . the most important thing to verify as part of the research is what do customers think about the product. So, we talked to seven ex-employees, we talked to fourteen large customers. These are not rinky-dink customers. . . . and the feedback from all fourteen customers was extremely negative. They told us that the product, which is overpriced to begin with, at a shocking \$2 million—that the product basically doesn’t work. It doesn’t do what it purports to do, and in many cases, they just mothball it. . . . And that was actually confirmed by the former employees we talked to.”

143. And with regard to Scorpion’s interviews with former employees, Khalon explained, “we’re very careful to screen for the former employees that we speak with. Occasionally, you can have employees that are disgruntled, but we talked to former executives. You know, these are extremely credible people. We verify that information by talking to many

1 different ex-employees.” Khalon continued, “And in this case the information was very consistent  
2 from employee to employee, from customer to customer, so we’re very confident that the findings  
3 are correct.” In short, he concluded: “they [the customers] did get fleeced.”

4 144. In contrast, Berkeley Lights’s response was tepid—it did not address any of the  
5 facts of the Scorpion Capital Report or offer any specifics in response. Rather, it read, in its  
6 entirety:

7 We have strong and continued confidence in our business, technology, customer  
8 relationships, and the value we deliver. The Berkeley Lights technology enables  
our customers to find the biology that cures disease.

9 The report from Scorpion, a self-proclaimed short seller, contains highly  
10 misleading statements, groundless claims and a clear lack of industry  
11 understanding. It’s important to note that Scorpion never reached out to us prior to  
the publication of their report. We believe the sole purpose of the report was to  
serve the short seller’s interests at the expense of Berkeley Lights shareholders.

12 Berkeley Lights is well positioned to continue to drive customer success and  
13 execute our business strategy.

14 145. Given the Scorpion Capital Report, the ensuing interview on September 16 with  
15 the founder of Scorpion Capital, and the Company’s response to the report issued during the same  
16 interview and also made available in an 8-K filing the following day on September 17, the  
17 investing public had a choice to make. Investors credited the well-sourced and researched short  
18 report, with Berkeley Lights’s share price continuing its fall the following week as the market  
19 continued to digest the news. Ultimately, by the end of the following week, on September 23,  
20 2021, Berkeley Lights’s share price had fallen below its IPO-offering price (to \$21.95) for the first  
21 time since the Company went public.

22 146. Berkeley Lights tried to minimize the damage, continuing to issue false statements,  
23 as described above in ¶¶ 106-11, 113-17, in an effort to convince the market of the falsity of the  
24 Scorpion Capital Report. The efforts worked, at least partially, and the entire artificial inflation in  
25 the price of Berkeley Lights stock did not immediately dissipate.

26 147. Contemporaneous analyst reports confirm the effectiveness of Berkeley Lights’s  
27 PR strategy. J.P. Morgan’s September 16, 2021, analyst report read, “Overall, we see little merit  
28 in most of the accusations made in the short report, and we believe the underlying value proposition

1 of BLI's Beacon platform stays intact. In fact, BLI had customers on site yesterday who expressed  
 2 no concern in reaction to the Scorpion Capital Report. Management remains confident in the path  
 3 forward and will continue to focus on execution." Similarly, William Blair's October 12, 2021,  
 4 report read:

5 In our view, the reason for the prerelease is part of a broader effort from the  
 6 company to show the strength of the business and chip away at the recent  
 7 commentary that has questioned the company's value proposition and near-term  
 8 results. While this will not put those concerns to bed completely, we see this as a  
 9 step in the right direction as the team is demonstrating not only financial results but  
 ongoing utilization from existing customers, which would seem to validate the  
 company's use-cases to some degree.

10 **D. Defendant Hobbs Replaced as CEO as the Company Falls Well Short of  
 Projections for Full-Year 2021**

11 148. The truth about the actual capabilities of Berkeley Lights's platform (or lack  
 12 thereof) was fully revealed on January 5, 2022, when the Company issued a press release  
 13 announcing that Defendant Hobbs was demoted from his position as CEO. The demotion was  
 14 characterized as a transition, with Hobbs remaining with the Company in a new position as  
 15 president of the Antibody Therapeutics business line. But whatever spin the Company tried to put  
 16 on the demotion, its purpose was clear as the Company simultaneously announced a significant  
 17 shortfall in its total revenue for 2021.

18 149. As announced by the Company on January 5, total revenue for 2021 was expected  
 19 to be between \$84 and \$84.5 million, well short of the projected \$90 to 100 million, a figure the  
 20 Company continually reaffirmed throughout 2021, including on May 11 and August 11. The end  
 21 of year revenue miss implied a significant shortcoming for the fourth quarter 2021: \$22 million in  
 22 revenue for the quarter, a 10% sequential decrease, when the Company had continually assured  
 23 investors that product placements and revenue would tick up in the fourth quarter 2021 as a result  
 24 of, among other reasons, usual seasonality. The press release also indicated that product  
 25 placements continued (and would continue) to take a hit, corroborating the Scorpion Capital  
 26 Report in this important respect.

27 150. The Company indicated that the decision to replace Hobbs with a new CEO resulted  
 28 from Hobbs' lack of experience necessary for scaling up commercialization of Berkeley Lights's

1 platform. This is a peculiar explanation for the CEO transition given that the Company had long  
2 described Hobbs as necessary to the success of the Company and included risk disclosures in its  
3 SEC filings indicating that the loss of Hobbs could adversely impact the business. Additionally,  
4 scaling up commercialization was already a priority for Berkeley Lights, as should be obvious for  
5 a company with a supposed \$23 billion TAM that to date had yet to top \$85 million in annual  
6 revenue.

7 151. The Company was toeing a precarious line, otherwise indicating to investors that it  
8 was not changing its fundamental strategy.

9 152. In response to the January 5, 2021 news, the Berkeley Lights share price plunged  
10 on the following day, falling from a closing price of \$16.27 on January 5, 2022 to a closing price  
11 of \$9.88 per share on January 6, 2022, or a 39.3% drop, on volume in excess of 11.8 million shares.  
12 The Company lost \$431.2 million in market capitalization as a result.

## 13 14 **V. ADDITIONAL SCIENTER ALLEGATIONS**

15 153. The allegations in this Section allege scienter as to each Defendant. The inference  
16 and conclusion that Defendants acted with scienter, that is, that they intended to mislead the  
17 investing public or were reckless as to the possibility of misleading the investing public, is  
18 supported by the following facts. While organized into sub-Sections for readability, the following  
19 allegations of scienter are mutually corroborating. Here, numerous well-pled facts demonstrate a  
20 “strong inference” of each Defendant’s scienter.

### 21 **A. Defendants’ Misrepresentations Were Necessary to Go Public**

22 154. As discussed above, Defendants made many of their misrepresentations and  
23 omissions while soliciting funds from investors in their initial public offering, with their  
24 misstatements allowing the Company to complete the IPO. With the Company having a small  
25 installed base and acknowledging that it was “still in the very early stages of platform adoption,”  
26 the Company had to justify its value proposition as a growth company. Without the  
27 misrepresentations and omissions about the groundbreaking capabilities of Berkeley Lights’s  
28 platform, and in particular, its flagship Beacon instrument, the Company’s growth leading up to



the IPO, and its prospects for future growth with a \$23 billion TAM, Defendants would have had difficulty convincing the investing public to buy shares in the IPO.

155. Notably, the need to raise capital was a going concern for the Company to continue operations, given its poor direct revenues. In the Company's IPO Risk Disclosures, Defendants reported that the Company "need[ed] to raise additional capital to fund [its] existing operations" in addition to expanding operations. The Company also noted that, based on its then-current business plan, the net proceeds from the offering, together with its current cash, would cover approximately the Company's next 12 months or more.

156. And Defendants' false and misleading representations had their intended effect: On July 17, 2020, Berkeley Lights's stock opened for trading at \$51.05 after pricing 8,100,000 shares of common stock at a \$22.00 per share public offering price. The Company also granted the Underwriter Defendants a 30-day option to purchase up to an additional 1,215,000 shares of common stock at the IPO price. The gross proceeds from this offering (excluding adjustments) earned Berkeley Lights approximately \$178.2 million in funds.

157. Additionally, Defendants were able to use the Company's public status for lucrative self-enrichment. In the wake of the Company's Offerings, Berkeley Lights's compensation committee granted equity awards for its named officers in the form of stock options and restricted stock options ("RSUs"). Between January 10, 2021 and March 15, 2021, in the wake of the IPO and SPO, the Company awarded "incentive-based" equity, unrelated to performance, to its executives in the following amounts:

Name	Options		RSUs	
	(\$)	(# shares)	(\$)	(# shares)
Defendant Hobbs (CEO)	2,281,314	85,600	768,196	14,300
Defendant Wood (CFO)	813,655	30,000	3,330,200	55,000
Keith Breinlinger	826,592	31,000	268,600	5,000
Stuart Merkadeau	533,531	20,000	268,600	5,000
Matthew Rosinack	480,179	18,000	268,600	5,000

158. Further, once public, Berkeley Lights executives and insiders, including Defendants Hobbs and Holt and Control Defendants WRVI, Sequoia, Nikon, and Khandros,



1 became able to sell substantial amounts of BLI stock, which they otherwise could not have  
2 accomplished without the Company going public. These sales are described in detail below.

3 **B. Berkeley Lights's Senior Executives' Insider Sales Were Unusual and**  
4 **Suspicious**

5 159. After the IPO, Defendants continued to act with scienter insofar that they knew, or  
6 recklessly disregarded, that the public documents and statements issued or disseminated in the  
7 name of the Company were materially false and misleading; knew that such statements or  
8 documents would be issued or disseminated to the investing public; and knowingly and  
9 substantially participated or acquiesced in the issuance or dissemination of such statements and  
10 documents as primary violations of federal securities laws.

11 160. Defendants engaged in this scheme to further inflate the price of Berkeley Lights  
12 common stock, enhance the value of their holdings of Berkeley Lights common stock and other  
13 securities (including the options and RSUs granted through the executive compensation programs  
14 described above), and to allow for massive insider sales. To that end, in November 2020, Berkeley  
15 Lights conducted a Secondary Offering of common stock that allowed certain insiders, including  
16 Control Defendants WRVI, Nikon, and Khandros and WRVI's founding managing partner and  
17 director of Berkeley Lights, Michael Marks (named defendant for the Securities Act Claims), to  
18 sell 3.45 million shares of their Berkeley Lights common stock at \$86 per share, generating nearly  
19 \$300 million in offering proceeds for the selling insiders. These SPO sales included an additional  
20 450,000 shares of Berkeley Lights common stock, which the selling stockholders granted the  
21 underwriters through options exercisable within 30 days.

22 161. The SPO was unusual not only because of its close proximity to the IPO—which  
23 had been conducted less than four months previously—but also because the underwriters for the  
24 IPO had agreed to allow the selling stockholders to exit their 180-day IPO lockup agreements early  
25 (with respect to the SPO stocks sold). Such early releases from lockups are not only aggressive  
26 but relatively rare. The purpose of a 180-day (6 month) lockup is to help stabilize the stock price  
27 by preventing pre-IPO shareholders from dumping their stock as soon as the company goes public.  
28 Early releases, on the other hand, reward early investors for taking bets on the company by

1 allowing them to benefit from IPO success and by giving them a “safe window” within which to  
2 sell their shares.

3 162. Additionally, the SPO was notable because it allowed insiders to sell their Berkeley  
4 Lights common stock at an offering price more than 8.5 times higher than the market price to  
5 which Berkeley Lights stock fell following the revelation of the true facts concealed by  
6 Defendants, discussed above. The sell-off was not limited to the SPO, however, as numerous  
7 Company insiders sold tens of millions of dollars’ worth of additional Berkeley Lights stock in the  
8 secondary market, including Defendants Hobbs and Holt who collectively sold over \$34 million  
9 worth of their personal Berkeley Lights stock at prices as high as \$62 per share. These sales were  
10 suspicious in both timing and amount.

11 163. For example, during the Class Period, Defendant Hobbs made more than \$25  
12 million from insider sales of more than 442,800 shares of Berkeley Lights stock. The first  
13 significant sale occurred on March 1, 2021. This date was notable for Hobbs and other Individual  
14 Defendants for several reasons.

15 164. First, just one week prior to March 1, Defendants had issued a press release and  
16 held a corresponding earnings call concerning the Company’s financial and operational results for  
17 the quarter and fiscal year ended December 31, 2020 (“FY20”). In the release, Defendants  
18 proclaimed that Berkeley Lights had achieved total revenue of \$21.7 million during the quarter,  
19 earned total revenue of \$64.3 million during FY20, and had placed nine platforms during the fourth  
20 quarter. Meanwhile, on the earnings call, Defendants Hobbs, Holt, and Wood told investors that  
21 Berkeley Lights was experiencing three growth tailwinds that created direct platform sales growth  
22 for the Company. Defendants made these statements despite knowing that (a) Berkeley Lights’s  
23 flagship instrument, the Beacon, suffered from numerous design and manufacturing defects,  
24 (b) Berkeley Lights had received numerous customer complaints regarding the durability and  
25 effectiveness of the Company’s automation systems, and (c) the actual market for Berkeley  
26 Lights’s products and services was a fraction of the \$23 billion represented to investors because  
27 of, inter alia, the relatively high cost of the Company’s instruments and consumables and inability  
28 to provide the sustained performance necessary to justify these high costs.

1           165. Second, March 1 was the end date for Berkeley Lights’s 2020 Employee Stock  
2 Purchase Plan, under which all participants were deemed to have exercised their options in full.  
3 Upon exercise, each plan participant would purchase the number of whole shares that their  
4 accumulated payroll deductions would have purchased at the list option price. In other words,  
5 beginning on March 1, Defendant Hobbs and other Berkeley Lights employees gained access to  
6 all the Berkeley Lights common stock they had built up from FY2020 relating to their Berkeley  
7 Lights employment, and thus gained access to a new swath of Berkeley Lights common stock that  
8 they could immediately unload.

9           166. Finally, as of March 1, the Company had yet to file with the SEC its annual report  
10 for FY2020 on Form 10-K, which had been previewed in the February press release and earnings  
11 call. As discussed above, the Annual Report contained the full financial and operational  
12 information for FY20 that had been previewed in the Company’s late-February press release and  
13 earnings call. Additionally, Defendants made new representations in the Form 10-K concerning  
14 the purported capabilities and effectiveness of the Berkeley Lights platform. Notably, the Form  
15 10-K disclosed information that would later be recognized as warning lights for investors in the  
16 aftermath of the Scorpion Capital Report, including the fact that the Company had sold virtually  
17 the same number of lab instruments in 2020 as it did the year prior.

18           167. For his March 1 transaction, Defendant Hobbs sold more than 200,000 shares of  
19 Berkeley Lights common stock and earned more than \$12 million.

20           168. Less than two weeks later, on March 11, 2021, Defendant Hobbs completed his  
21 second significant Class Period stock transaction—selling nearly 81,000 shares in a single day.  
22 The very next day, Berkeley Lights filed with the SEC its annual report for FY20. For his sale of  
23 nearly 81,000 shares, Defendant Hobbs earned more than \$4.5 million.

24           169. Like Defendant Hobbs, Defendant Holt made similarly timed trades on March 1,  
25 2021 and March 12, 2021, earning him more than \$9.3 million from the sale of nearly 183,000  
26 shares, as Holt prepared to leave the Company.

27           170. In the ensuing months, as the truth of Defendants’ fraud began to slowly emerge  
28 but before the other shoe dropped and Defendants’ fraudulent conduct became fully known to the

market, Defendant Hobbs continued to make significant sales of Berkeley Lights stock, selling 157,500 shares for proceeds of over \$7 million between March 25 and August 18, 2021. These sales are further suspicious in terms of amount and timing when compared with Defendants Hobbs' subsequent sales. Indeed, after his August 18, 2021 sales, Defendant Hobbs did not sell any other shares in the Company through the end of the Class Period.

171. While these in-Class-Period sales were made pursuant to 10b5-1 plans, Defendants entered into those plans during the Class Period while they were in possession of material non-public information. All of the foregoing sales were made by Defendants Hobbs and Holt without disclosing the materially adverse facts about Berkeley Lights that they were privy to.

172. In addition to Defendants Hobbs and Holt, other corporate insiders opened a flurry of Rule 10b5-1 Plans<sup>4</sup> that envisioned these insiders selling their shares of common stock at approximately \$60 per share. Nevertheless, throughout the Class Period, insiders sold their shares at progressively lower prices, dropping down to between \$30 to \$40 per share, prices more than 40% below their 10b5-1 Plans' inception prices.

173. Between March 1, 2021 and May 11, 2021, when the first partial corrective disclosure was made, the following additional insider sales occurred:

<b><u>Officer or Director</u></b>	<b><u>Total Shares Sold</u></b>	<b><u>Total Proceeds Received</u></b>
Director Sarah Boyce	10,000 shares	\$611,340
CTO Keith Breinlinger	50,550 shares	Over \$2.6 million
General Counsel Stuart Merkadeau	24,005 shares	Over \$1.3 million
CAO Matthew Rosinack	21,000 shares	Over \$1.3 million
Director James Rothman	236,155 shares	Over \$13 million

<sup>4</sup> Rule 10b5-1 allows company insiders to make predetermined trades while following insider trading laws and avoiding insider trading accusations. The price, amount, and sales dates must be specified in advance and determined by a formula or metrics. Rule 10b5-1 also stops any insiders from changing or adopting a plan if they are in possession of material nonpublic information (MNPI).

1 Merkadeau and Breinlinger continued to unload their stock in the months that followed, selling  
2 46,172 and 65,750 shares for proceeds of over \$2 and \$2.8 million, respectively, before the  
3 Scorpion Capital Report was issued on September 15, 2021.

4 174. These insider sales are probative of Defendants' scienter and are part of  
5 Defendants' scheme, artifice to defraud, or acts, practices, or course of business in violation of  
6 §10(b) and Rule 10b-5. While Defendants were issuing materially false and misleading statements  
7 about Berkeley Lights's business and concealing material adverse information about its operations  
8 and business dealings, Defendants Hobbs and Holt, who had access to confidential information  
9 and were aware of the truth about the Company and its business by virtue of their association with  
10 and control over the Company, reaped massive financial benefits from this illegal scheme and  
11 course of conduct by selling roughly \$34 million of Berkeley Lights common stock at artificially  
12 inflated prices.

13 **C. The Control Defendants' Sales Were Also Unusual and Suspicious**

14 175. Defendants Hobbs and Holt and the other Berkeley Lights corporate insiders  
15 described above were not alone in making unusually large and suspiciously timed stock trades.  
16 Indeed, Berkeley Lights's largest shareholders at the time of the IPO, Control Defendants WRVI,  
17 Nikon, Sequoia, and Khandros—each of which presumably had visibility into Berkeley Lights's  
18 sales pipeline—all liquidated or otherwise disposed of significant numbers of their shares prior to  
19 the filing of Berkeley Lights's FY 2020 annual report—in total, more than 19 million shares of  
20 Berkeley Lights common stock.

21 176. These Defendants began their first tranche of stock dumps during the suspiciously  
22 timed SPO, which to stress again, resulted in no additional revenues for Berkeley Lights. More  
23 specifically, through the SPO, after deducting for underwriter discounts or commissions,  
24 Defendant WRVI sold 1,386,047 shares for total proceeds of over \$114 million, Defendant  
25 Khandros sold 1,209,388 shares for total proceeds of over \$99 million, and Defendant Nikon sold  
26 436,000 shares for total proceeds of over \$35 million.

27 177. WRVI's founding managing partner and director of Berkeley Lights Michael  
28 Marks (again, a named defendant in the Securities Act Claims) also stood to profit handsomely

1 from the SPO. In connection with the SPO, Marks reported a sale 362,600 shares of Berkeley  
2 Lights common stock at an average share price of \$82.56, totaling nearly \$30 million in value,  
3 attributed to his beneficial interest in the shares held and sold by WRVI. Two weeks later, on  
4 December 10, 2020, Marks reported the sale of an additional 55,162 shares at an average share  
5 price of \$82.56, totaling more than \$4.55 million in net proceeds.

6 178. The Control Defendants' Class Period sales did not stop with the SPO, however, as  
7 they continued to unload their stock in the following months. The first to go was WRVI. On  
8 January 12, 2021—the first day after the lock-up period for Berkeley Lights stock expired—WRVI  
9 distributed each and every BLI share remaining among its holdings—12,276,309 shares worth  
10 approximately \$1.1 billion—to its limited partners and members.

11 179. WRVI's founding managing partner Marks was one of the beneficiaries of these  
12 distributions. For example, in January 2021, the Marks Family Trust—for which Marks was a  
13 trustee—received nearly 1.27 million of the 12.28 million shares of Berkeley Lights common stock  
14 distributed by WRVI. In the two-week period between March 1, 2021—after Berkeley Lights's  
15 FY20 press release—and March 11, 2021—the day before Berkeley Lights published its 2020  
16 Annual Report, the Marks Family Trust unloaded, in total, 200,000 shares of its Berkeley Lights  
17 common stock, reaping more than \$11 million in gains.

18 180. WRVI was not alone in its corporate exit. As explained above, Nikon sold 436,000  
19 shares during the SPO for total proceeds of over \$35 million. Then, on March 1, 2021, Nikon  
20 liquidated every one of the 3,976,734 shares that it continued to own after the SPO. Put differently,  
21 as reflected in the Form 13G filed by Nikon on March 9, 2021, Nikon completely exited its  
22 Berkeley Lights's position, going from a 6.1% ownership interest to retaining zero shares and zero  
23 percent interest in the Company. Assuming Nikon sold these shares at the lowest share price  
24 recorded for March 1, 2021, Nikon would have earned proceeds of over \$226 million. If Nikon  
25 received more realistic returns, selling these shares at the average share price this day, it would  
26 have earned proceeds of over \$247 million.

27 181. Sequoia too began to jump ship in the immediate aftermath of the SPO. As reflected  
28 in the Berkeley Lights's proxy filed in connection with the 2021 annual shareholder meeting, as

of March 23, 2021, Sequoia continued to hold 4,828,808 shares of Berkeley Lights stock, making it beneficial owner of 7.3% of the Company. With 8,048,013 shares beneficially owned as of the SPO (12.5% of all outstanding shares), this meant that Sequoia had disposed of 3,219,205 shares in the ensuing four months. As reflected in a Form 4 filed by Sequoia on March 16, 2021, Sequoia disposed of 1,609,603 of these shares on March 12, 2021 by distributing them to its partners and managers. Priced at Berkeley Lights's closing share price of \$54.24 on March 12, 2021, the distributions to Sequoia's partners and managers would have had a value of over \$87 million. As further disclosed by Sequoia in the Form 4, as a result of the distributions, Sequoia no longer held over 10% of the outstanding stock of Berkeley Lights and thus no longer needed to report its changes in ownership of the stock. Nevertheless, there are indications that Sequoia continued its fire sale. By the following year when the Company filed its annual proxy for the 2022 shareholder meeting, Sequoia was no longer identified as a 5% stockholder, meaning it had disposed of at least an additional 1,437,799 shares.

182. Already making over \$90 million in connection with the SPO, Defendant Khandros also continued to sell his shares in the Company, when over the course of less than a month between August 12, 2021 and September 9, 2021, less than a week before the Scorpion Capital Report was issued and Berkeley Lights's stock price lost 30% of its value in two days, Khandros sold another 300,000 shares for over \$10 million.

**D. Defendants Actively Disregarded Contradicting Data Regarding Marketability and customers' dwindling payments**

183. Defendants were alerted to problems with the Berkeley Lights platform through the rapid shift in the quality and source of the Company's revenue during the Class Period. As discussed above, during this nearly two-year period, Berkeley Lights experienced relatively flat growth in its product revenues. Meanwhile, the Company's revenue from service-side sources including customer training and support spiked and accelerated from a high of approximately 22% in quarters prior to the IPO to up to 32% of the Company's total revenue by the end of June 2021. Further, revenue attributable to "joint development agreements"—another way of framing the time and materials expended to assist current customers—grew from just 12% of total sales in 3Q20 up

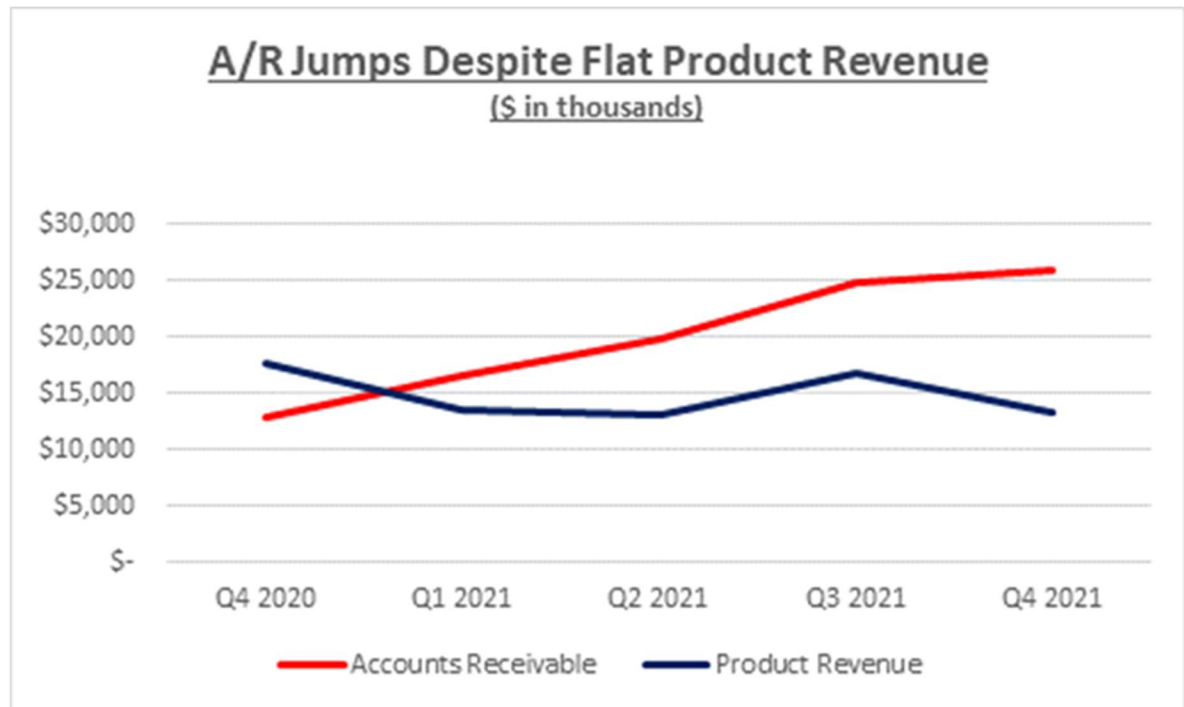


1 to 20% by the end of 2Q21. These sudden increases in service-based revenue as opposed to  
2 product-sales-based revenue strongly signaled the declining demand for Berkeley Lights's  
3 product. Indeed, the Company hinted at waning demand, introducing a subscription pricing model  
4 for its platform shortly before the IPO. Additionally, in connection with the IPO and SPO, the  
5 Company admitted that it needed to expand customer adoption "through alternative non-direct  
6 capital sales channels, including our subscription, partnering and services offerings." It may be  
7 strongly inferred that Defendants, by virtue of their positions, were aware of the magnitude and  
8 significance of these revenue numbers. Additionally, it may be inferred that Defendants  
9 knowingly relied on service revenue to plug revenue holes.

10 184. The Company's declining recurring revenue streams also undercut any argument  
11 that Defendants may raise that they were unaware of their alleged fraud. As alleged in the Scorpion  
12 Capital Report, recurring revenues are the consumables used for each run/assay, namely disposable  
13 chips, and reagents, run by Berkeley Lights's customers. Throughout the Class Period,  
14 consumable revenues significantly worsened, decreasing downward 18%, despite the purported  
15 installed base for Berkeley Lights's instruments increasing from 75 to 82. The decrease in  
16 recurring consumables revenue in the face of an increased user base strongly suggested to  
17 Defendants that Berkeley Lights's customers were decreasingly utilizing Berkeley Lights's  
18 platform. Individual Defendants, as a result of their positions in the Company, would have had  
19 direct access to this sales and revenue information.

20 185. As further evidence that customers were becoming dissatisfied with the Beacon's  
21 product defects and breakdowns, Berkeley Lights was seeing its accounts receivable spike  
22 tremendously while its product sales remained relatively flat or even decreased in certain quarters.  
23 For example, in 1Q21, product sales decreased 24% compared to the prior quarter, yet accounts  
24 receivable increased by 27%. Similarly, in 2Q21, product sales decreased 4% compared to the  
25 prior quarter, yet accounts receivable increased by 20%. For all of FY21, product sales increased  
26 only 10%, while at the same time accounts receivable increased a resounding 100%. This  
27 concerning trend, further reflected in the below graph, was surely known to Defendants, and  
28

1 supports the fact that they were aware that customers were not paying for the Beacon product on  
2 a timely basis due to its poor performance.



15 **E. Defendants Were Informed of Their Products' Shortcomings by Their Pre-**  
16 **Class Period Trials with Academic Research Customers**

17 186. Given their dual executive and science backgrounds, Individual Defendants also  
18 knew, or should have been aware that, the absence of academic papers or other life science  
19 publications regarding the Berkeley Lights platform's use cases doomed the platform's  
20 commercial potential.

21 187. To break through in these areas, the Company offered free six-month trials to  
22 several academic research customers in the hopes of producing publishable data that would ease  
23 the perception of Berkeley Lights's platform in the eyes of scientists and the FDA (which might  
24 use data obtained from Berkeley Lights devices in authorizing pharmaceutical therapies). For  
25 example, Berkeley Lights sent one such academic research customer, UCSF, its Lighting  
26 product—a product specifically designed for academic labs—for free on a trial basis, in an  
27 arrangement by which UCSF would be allowed to use the product for six months to perform a  
28 number of projects with the hope that they would purchase the product thereafter. When UCSF

1 failed to produce an amount of data sufficient for publication, Berkeley Lights extended the free  
2 trial from six to nine months; however, no publishable data ever came from the trial.

3 188. Likewise, in the second half of 2019, Berkeley Lights also sent NIH a Lightning  
4 for free on a trial basis, again in the hope that NIH would run several experiments and produce  
5 publishable data. NIH, however, returned the platform after six months and informed Berkeley  
6 Lights that it had decided to instead purchase a different system from a competing device  
7 manufacturer with superior throughput that could meet NIH's needs.

8 189. By virtue of its importance to the Company, it can be strongly inferred that  
9 Defendants knew or were aware of these academic research customers' disastrous experiences  
10 with Berkeley Lights's Products. The lack of published data validating both the Lightning and  
11 Beacon led to a vicious circle with a lack of customers, which led to a further lack of published  
12 data and so on, creating further known obstacles to product marketability.

13 **F. Defendants' Decision to Introduce Subscription Models Demonstrates Their**  
14 **Knowledge of the Significant Challenges of Selling Their Products Beyond**  
**the Company's Saturated Customer Base**

15 190. As discussed above, at the start of 2021, as product placements and revenue  
16 slumped, the Company made a deliberate shift in its business model by introducing a new  
17 subscription model in an effort to drive greater platform placements. Defendants claimed in press  
18 releases and in calls to investors that a subscription model would increase SAM and incremental  
19 unit placements. In truth, the subscription model was also designed to prop up the Company's unit  
20 placements and get more products out the door to customers disinterested in paying the full \$2  
21 million price tag for the Beacon in a lump sum payment or incremental installment plans.

22 191. Because of the Beacon's repeated material failures, which were known to  
23 Defendants, Defendants likely knew or should have been aware that subscription customers  
24 exposed to the Beacon's weaknesses were unlikely to become long term subscription or platform  
25 customers of Berkeley Lights. Defendants also knew, or should have been aware, that Berkeley  
26 Lights subscription customers were coming at the expense of platform customers because smaller  
27 customers were choosing the subscription model over the Beacon's \$2 million platform price tag.  
28 Indeed, during a 1Q21 earnings call, Defendant Wood conceded as much, telling investors that, as

1 the Company ramped up new subscription offerings, “it is possible that some previously  
2 anticipated CapEx sales may transition to a subscription offering,” thus impacting revenues.

3 192. Problems with the subscription model (and the revenue recognition slumps the  
4 model intended to hide) were readily apparent to Defendants. First, Berkeley Lights introduced  
5 the new model right on the heels of the introduction of another subscription model just one year  
6 earlier, in February 2020, which had floundered despite similar promises that it would enable  
7 broader customer access. Second, despite touting the subscription model’s possibilities throughout  
8 2021, the Company maintained its original guidance on total expected revenue for the year. As  
9 such, it can be strongly inferred that Defendants knew or were aware of the functionality and  
10 demand problems with Berkeley Lights’s platform when making the false statements identified  
11 above to investors, further evidencing Defendants’ scienter.

12 **G. Oversight and Due Diligence Supports a Strong Inference of Scienter as to**  
13 **the Control Defendants**

14 193. Through their significant ownership interest in the Company, appointment of  
15 directors, and managing personnel’s seats (or, in the case of Khandros, his own seat) on the Board,  
16 the Control Defendants had the power to influence and exerted this power over Berkeley Lights  
17 during the Class Period.

18 194. In addition, the Control Defendants had unique insight into the Company’s  
19 operations through their business relationships with Berkeley Lights and/or information rights  
20 gained as a part of their early investments in the Company, including the right to visit and inspect  
21 the Company’s properties and to examine its books of accounts and records. These were provided  
22 for in an Investors’ Rights Agreement that the Control Defendants entered into with Berkeley  
23 Lights, which agreement also provided that the Company would provide monthly, quarterly, and  
24 annual unaudited financial statements to the Control Defendants. In combination with their  
25 participation on the Board of Directors, this provided the Control Defendants with insight about  
26 the Company not available to the rest of the investing public.

27 195. Additionally, with respect to Nikon, its agreement with Berkeley Lights, under  
28 which Nikon would act as the Company’s exclusive product distributor in Japan, Singapore,

1 Thailand, and South Korea (and non-exclusive distributor in China), provided Nikon with  
 2 important insight into Berkeley Lights’s placement of products in Asia, including trends in  
 3 accounts receivable. Berkeley Lights considered the Asia Pacific region vital for expanding  
 4 product growth, and throughout the Class Period, this geographical market was a growing source  
 5 of revenue for Berkeley Lights, accounting for over 30% and 41% of its revenues, respectively in  
 6 2020 and 2021. Accordingly, Nikon had direct insight into the Company’s sales and revenue in  
 7 this large and growing geographical product market.

8  
 9 **H. Defendants’ Direct and Extensive Involvement in Developing and Marketing  
 Berkeley Lights’s Products**

10 196. Defendant Hobbs joined the Company in 2013 to lead the commercial development  
 11 of Berkeley Lights’s opto-fluidic technology, which resulted in the Beacon system—one of the  
 12 primary subjects of this lawsuit. Throughout the Class Period, Hobbs and other Defendants  
 13 routinely touted at investor events how much the Company’s largest purchasers valued the  
 14 Berkeley Lights platform. For example, during a January 12, 2021 conference hosted by JP  
 15 Morgan, Defendant Hobbs proudly claimed that Amgen had “converted wholly to Berkeley  
 16 Lights” given the “superiority” of the platform’s workflows. Defendant Hobbs made similar  
 17 public representations at conferences hosted by Cowen and KeyBanc in March 2021. He also  
 18 routinely commented on the drivers of the Company’s purported sales growth during the Class  
 19 Period in investor calls and other public events. As such, he is intimately familiar with the  
 20 Company’s products and customer experiences, further evidencing his scienter when making the  
 21 false statements identified above.

22 **I. Defendants’ Deceptive Pattern of Disclosures Concerning Market Demand  
 23 Support a Strong Inference of Scienter**

24 197. As detailed above, Defendants issued a series of partial disclosures and half-  
 25 admissions concerning poor product placement and limited adoption of expanded use cases for the  
 26 Beacon, but those statements showed a consistent pattern of (a) failing to acknowledge the  
 27 severity, scope and longstanding duration of the Company’s direct sales problems; (b) failing to  
 28 acknowledge the underlying cost, error rate, limited use case, and customer utilization issues

1 resulting in poor sales, or the need for adopting a subscription model; (c) attempting to deflect  
2 blame for poor financial reports due to lags created from its sales-to-subscriptions strategy shift,  
3 even though the Company still faced mounting barriers to new unit placement , (d) understating  
4 the persistence of the problems, and (e) overstating Berkeley Lights’s capacity to mitigate or  
5 resolve the problems. *See supra* at ¶¶ 80-116. All of these statements, by their very nature, served  
6 to mislead and are in themselves suggestive of deceptive intent.

7       198. One indicator of the severity and the persistence of the sales problem was Berkeley  
8 Lights’s inability to meet its product placement projections, even after shifting to a subscription  
9 model. For 2021, the Company represented that it expected total revenues between \$90 to 100  
10 million for the full year 2021 with “at a minimum” 45 total placements—approximately 11-12  
11 placements per quarter. In its 1Q21 Report, released on May 11, 2021, the Company revealed that  
12 it had only sold eight platforms during the quarter, down from the prior quarter (9 placed in 4Q  
13 2020) and equal to the number sold in 3Q 2020. It was at this time that the Company introduced  
14 its new subscription model to bolster stagnant sales. *See also supra* ¶¶ 101-04 (discussing why it  
15 was clear to Defendants at the time why this strategy was doomed from the start). On this news,  
16 the Company reaffirmed its 2021 guidance. Nevertheless, the downward trend in revenue and  
17 product placement persisted throughout the year. For 2Q21, the Company reported that revenues  
18 had again come under projections and that it had placed even fewer units—a dismal seven units  
19 for the quarter. With only fifteen units placed through the first half of the year, the Company  
20 needed to sell 30 units (or two-thirds of all units) over the second half of the year to meet its  
21 expected (“at a minimum”) 45 units sold in 2021.

22       199. The Company attempted to downplay external concerns by blaming the  
23 disappointing results (which had been trending downward for two successive quarters) on the new  
24 subscription model. The Company further represented that it believed an uptick was coming partly  
25 as a result of (i) the new subscription offering, (ii) the ramp up in partnership agreements, and (iii)  
26 usual seasonal differences with more heavily weighted past fourth quarters. As such, the Company  
27 again reiterated its revenue guidance for the year, but to meet the year-end revenue guidance,  
28 Berkeley Lights needed two unprecedented quarters in a row just to hit the low-end of guidance, a

1 minimum of \$26 million per quarter, or an almost 40% increase over its revenue reported for the  
2 first two quarters of the year.

3         200. The Scorpion Capital Report and Defendants' September 16, 2021 response  
4 thereafter demonstrates the bad faith of Defendants' partial disclosures and half-admissions,  
5 including those identified above. As discussed above, Defendants issued a meek, three-paragraph  
6 response affirming its confidence in its technology's potential and attacking the short-seller  
7 motives. As such, Defendants' response was more notable for what it did not say. First, with more  
8 than two-thirds of the 3Q21 completed and nearly two-thirds of year 2021 complete, Defendants  
9 no longer towed the line of expressing confidence in their 2021 revenue and product placement  
10 targets. Further, they failed to recognize or address *any* of the Report's 158 pages of findings,  
11 opinions, or the myriad of customer and former-employee interviews. For example, even though  
12 Scorpion Capital reported that "virtually every" ex-employee interviewed had described Berkeley  
13 Lights's TAM as "negligible," Berkeley Lights refused to give any information on how its TAM  
14 was actually calculated or how its estimates were more reasonable. Additionally, Defendants did  
15 not dispute the reported account that at least 14 Berkeley Lights's customers, which represented  
16 30% to 50% of entire installed base, thought the Beacon was a "flop."

17         201. The reasons for Defendant's implicit concessions are obvious: Defendants already  
18 knew, or must have known by September 2021, that their subscription gambit had failed to save  
19 the Company from its product placement slump due to problems inherent with the Beacon. This  
20 is confirmed by the Company's poor sales and revenue numbers as reported in its 3Q21 Report,  
21 published on November 4, 2021, and the corresponding earnings call. In the 3Q21 Report, the  
22 Company added a risk factor relating to the business and strategy that "changes in financial  
23 estimates or recommendations by securities analysts, as well as publications from research analysts  
24 associated with short selling, such as was published about us in Q3 2021" could harm Berkeley  
25 Lights's share price. And on the earnings call, in response to a question regarding Berkeley Lights  
26 iterating financial guidance at the lower end of the previously stated range, despite an ostensibly  
27 "strong" quarter, Defendant Wood confirmed that the Company expected to fall short on revenue  
28



1 and product placements yet again. In the face of these headwinds, however, Defendant Hobbs  
2 represented that the Company “ha[d] not seen a dramatic impact from the Scorpion short report.”

3       202. Taken together, and in combination with the information revealed by Scorpion  
4 Capital, Defendants’ disclosures regarding poor product placement, limited adoption of expanded  
5 use cases, and other factors affecting the Beacon’s marketability demonstrate a consistent pattern  
6 of bad faith and deception.

7       **J. Suspicious Employee Resignations**

8       203. The unexpected departure of key executives, namely, the Company’s former CFO  
9 Defendant Holt, its former Chief Accounting Officer Matthew W. Rosinack, and its former  
10 director Michael Marks, so soon after the IPO bolster an already compelling inference of scienter.

11       204. As alleged throughout the Complaint, Defendant Holt was personally involved in  
12 the fraud alleged herein and revealed in large part by the Scorpion Capital Report. He knew, or  
13 was aware, of the myriad complaints customers had regarding the Beacon and had access to the  
14 financial information pertinent to Berkeley Lights’s problems deploying its product to new and  
15 existing customers.

16       205. As such, Defendant Holt’s departure, first announced on February 25, 2021, on the  
17 same day that Berkeley Lights previewed its lackluster FY20 annual results, is strongly indicative  
18 of his and Berkeley Lights’s scienter.

19       206. Rosinack, as CAO, and Marks, as Berkeley Lights director and founding managing  
20 partner at Control Defendant WRVI, had significant roles in the Company and the fraud alleged  
21 herein, each signing (and thus responsible for the content and dissemination of) some of the  
22 Berkley Lights filings containing false and misleading statements.

23       207. As such, Rosinack’s resignation filed with the Company on May 24, 2021, less than  
24 two weeks after the first corrective disclosure alleged—the May 11, 2021 announcement of  
25 Berkeley Light 1Q21 results, *see supra* ¶¶ 101-04, 120-28, revealing that the Beacon could not  
26 meet the lofty promises made by the Company—supports a strong inference of scienter by  
27 Berkeley Lights and the Individual Defendants.

208. Similarly, on May 7, 2021, Marks notified the Company of his intention to retire from the Board effective May 14, 2021, shortly after he cashed out significant stock holdings in the Company, *see supra* ¶ 179, further supporting a strong inference of scienter by Berkeley Lights and the Individual Defendants.

209. Defendant Hobbs's "transition" from the central role of CEO to president of Berkeley Lights's Antibody Therapeutics Line in January 2022 further supports a compelling inference of his and the Company's scienter, given his knowledge of, and participation in, the fraud scheme alleged herein. As detailed above, Hobbs was demoted the same day the Company announced that its total revenues for FY21 would fall well short of its projections, and that product placements continued (and would continue) to take a hit. The Company attempted to justify this role change by claiming Hobbs lacked the experience necessary for scaling up commercialization of Berkeley Lights's platform, despite long describing Hobbs as necessary to the success of the Company and indicating in its SEC risk disclosures that the loss of Hobbs could adversely impact the business. Nevertheless, the Company did not announce that a specific successor was under consideration. The timing of Hobbs's resignation is also notable as it occurred just one month after the filing of the first class-action complaint. These facts are highly indicative of Hobbs and the Company's scienter.

210. Further, on March 7, 2022, Defendant Wood provided notice that he would be leaving the Company effective April 1, 2022. With Wood's resignation, the Company has seen two CFOs depart within a year's time. At the time of this filing, over four and half months after Wood announced his departure, the CFO position at Berkeley Lights remains unfilled. Given Wood's knowledge of, and participation in, the fraud scheme alleged herein, these facts are highly indicative of his and the Company's scienter

#### **K. Defendants' Imputed Knowledge of Facts Critical to BLI's Core Operations**

211. At all relevant times during the Class Period, Berkeley Lights was a small-to-medium sized company with less than 200 employees, with an even smaller, tight-knit upper management team. Additionally, Berkeley Lights was a one-product company, the revenue for which, the Company conceded in its IPO prospectus, was primarily generated from its direct

1 platform sales—largely driven by Beacon. As indicated in the Company’s IPO filings, in FY19,  
2 direct sales totaled \$39.1 million and contributed to 69% of the Company’s revenues (the  
3 remainder sourced from services, *i.e.*, installations/repairs, (12%) and “strategic partnerships”  
4 (17%)). And as discussed above, the Company sold, on average, less than 30 direct platform  
5 products per year.

6 212. Given the Company’s size, small (in magnitude) sales, and that its lab instrument  
7 sales are purported to be the major focus of Berkeley Lights’s business operations, it may be  
8 strongly inferred that Defendant Hobbs (the Company’s 5+-year CEO and, previously, VP of  
9 Commercial Development), Defendant Holt (the Company’s CFO for more than five years), and  
10 Defendant Wood (Holt’s successor as CFO and prior to becoming CFO, Vice President of Business  
11 Development) were fully aware of the status of all material matters involving Berkeley Lights’s  
12 core business operations throughout the Class Period, including the truth as to the matters alleged  
13 herein to have been materially misrepresented to and/or concealed from Plaintiffs and the members  
14 of the Class.

15 213. Because committed orders and customer base for Berkeley Lights’s lab instruments  
16 were core to the Company’s success, the materially false statements and omissions detailed herein  
17 could not have occurred without the Individual Defendants’ knowledge and approval. Indeed, as  
18 discussed above, and as reported in the Scorpion Capital Report, Berkeley Lights customers  
19 routinely complained to Berkeley Lights employees and executives regarding the platform’s  
20 Reliability. These problems included:

21 (a) Numerous hardware and software issues; software was constantly updated,  
22 confusing and throwing off customers.

23 (b) The instrument was highly prone to contamination—a concern that the  
24 Company continues to struggle with, and took multiple steps to mitigate.

25 (c) Data integrity problems with the Berkeley Lights platform, affecting the  
26 platform’s marketability both directly and indirectly, by making the platform unable for use for  
27 FDA-related submissions.

214. Moreover, the Individual Defendants were highly sophisticated and in positions to know that their statements concerning the superiority of the Berkeley Lights platform compared to existing cell instruments, as well as its financial performance, were false and misleading. For example, Defendant Hobbs—Berkeley Lights’s former CEO and a named inventor on more than 80 of the Company’s patents—joined the Company in 2013 to lead the commercial development of its opto-fluidic technology, resulting in the Berkeley Lights platform. Indeed, in commenting on Hobbs’s transition to CEO, Company founder Igor Khandros noted that Hobbs had “played a critical role in managing Berkeley Lights’s business operations, including the recent introduction of our Beacon platform.” Hobbs served as CEO beginning in 2017 and, in that role, made or endorsed many of the false statements alleged herein, including those in Berkeley Lights’s IPO Registration Statement, press releases, and other SEC filings. As CEO, Hobbs was at all relevant times intimately involved in Berkeley Lights’s activities, including the decision to hold an IPO and the decision to shift to a subscription model.

215. Defendant Holt served as Berkeley Lights’s CFO at all relevant times up until his unexpected transition, effective March 15, 2021, to an advisory role and subsequent departure from the Company on April 30, 2021. Like Hobbs, Holt served in his executive capacity for several years preceding the Class Period. Holt similarly made or endorsed the Company’s false statements, including those in its IPO Registration Statement, press releases, and other SEC filings. Defendant Wood—Defendant Holt’s successor and now, also, former CFO with over 25 years of finance experience—served as CFO beginning March 15, 2021 and, before that, served as the Company’s Vice President of Business Development. As such, he too has made or endorsed several of the Company’s false statements, including in his role as CFO.

216. Likewise, Control Defendant Khandros—the founder of Berkeley Lights and the CEO preceding Hobbs—was both sufficiently sophisticated and knowledgeable to know that the Company’s statements, as identified above, were false and misleading. Despite stepping down as CEO, Khandros, in his own words, has “maintain[ed] a very active presence in the company” as he “directs his energies to creating and building strategic partnerships.” Moreover, after his transition away from CEO, Khandros remained on the Berkeley Lights board and thus has access

1 to information, in addition to his personal and business contacts, concerning the Company's  
2 current operations.

3 217. The sophistication of the Individual Defendants, as well as that of Control  
4 Defendant Khandros, strengthens the allegations of scienter, by undermining an exculpatory  
5 explanation for the fraud.

6 218. Additionally, the scienter of the Individual Defendants is imputable to the  
7 Company, as the misrepresentations and omissions of Berkeley Lights, as alleged herein, were of  
8 such a nature that they would have been approved by corporate officials sufficiently  
9 knowledgeable about the Company to know that those statements and omissions were misleading.

## 10 11 **VI. LOSS CAUSATION AND ECONOMIC LOSS**

12 219. Because loss causation is not an element of Plaintiffs' Securities Act Claims, the  
13 allegations set forth in this section pertain only to Plaintiffs' Exchange Act Claims.

14 220. During the Class Period, as detailed herein, Berkeley Lights and the Individual  
15 Defendants engaged in a scheme to deceive the market and a course of conduct that artificially  
16 inflated the price of Berkeley Lights common stock. The Company's conduct operated as a fraud  
17 or deceit on Class Period purchasers of Berkeley Lights common stock by failing to disclose and  
18 misrepresenting the adverse facts relating to the Company's business and growth prospects that  
19 are detailed herein. By presenting a misleading picture of Berkeley Lights's business and  
20 prospects, Berkeley Lights and the Individual Defendants' false and misleading statements had the  
21 intended effect of causing Berkeley Lights common stock to trade at artificially inflated levels  
22 throughout the Class Period, reaching as high as \$106.00 per share on December 22, 2020.

23 221. The price of Berkeley Lights common stock fell precipitously, as the prior artificial  
24 inflation dissipated each time Berkeley Lights and the Individual Defendants' prior  
25 misrepresentations and material facts were at least partially disclosed or became apparent to the  
26 market, and/or the risks concealed by their misconduct at least partially materialized. As a result  
27 of their purchases of Berkeley Lights common stock during the Class Period, Plaintiffs and other  
28 members of the Class suffered economic loss, *i.e.*, damages under the federal securities laws.

222. Defendants' false and misleading statement and omissions, identified herein at ¶¶ 80-118, had the intended effect and caused Berkeley Lights's stock to trade at artificially inflated levels during the Class Period.

**A. May 11, 2021 Disclosure**

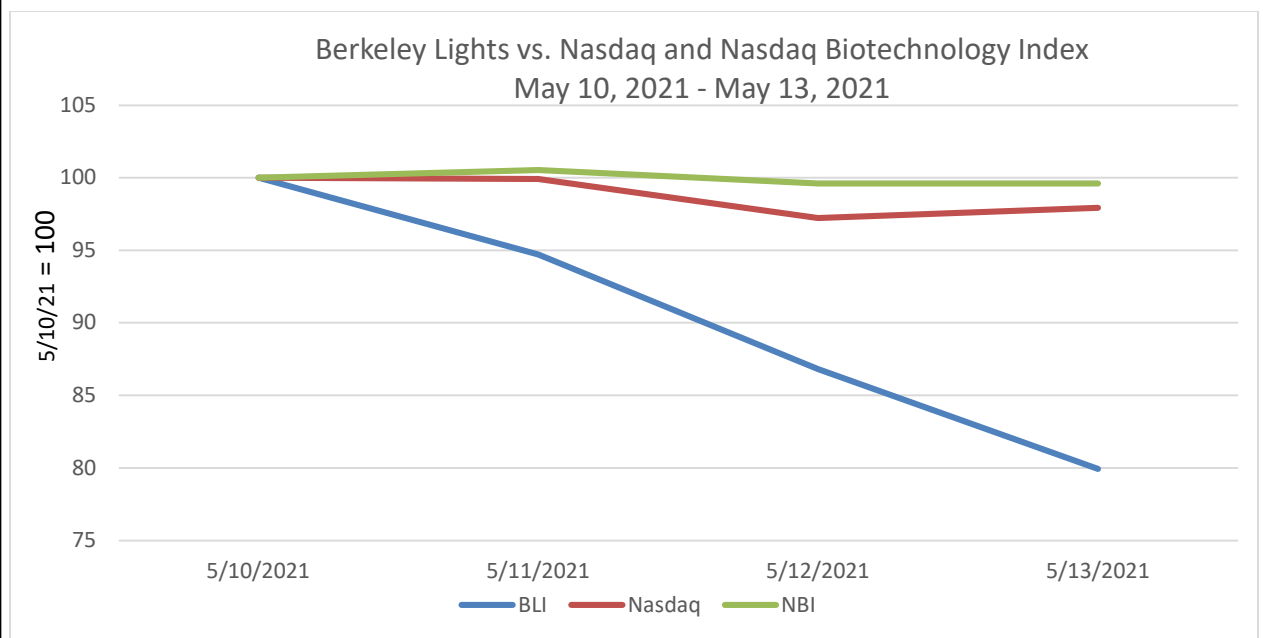
223. On May 11, 2021, just a few short months after Control Defendants WRVI, Nikon, and Khandros, along with WRVI's founding managing partner and Berkeley Lights's director, Michael Marks, made \$248 million through the sale of their shares in the SPO, and as they, the Individual Defendants, and other Company insiders continued to unload their stock in the Company following the SPO, Berkeley Lights issued a press release and filed its Form 10-Q announcing its 1Q 2021 financial results. These documents indicated serious issues with Berkeley Lights's flagship Beacon instrument, as the Company experienced poor product placement for the quarter, with only eight platforms placed. In addition, the Company held an Earnings Call on the same day, during which, it introduced a new subscription model intended to prop up product placements.

224. In direct response to these disclosures, as further detailed in ¶¶ 101-04, 120-28, Berkeley Lights's stock price suffered a significant decline. The Company's stock price fell from a closing price of \$45.54 per share on May 10, 2021 to a closing price of \$43.13 on May 11, 2021 on trading volume of more than 2.5 million shares. The May 11 share price drop reflected a market capitalization loss of over \$140 million, and a 5.3% decline from Berkeley Lights's closing price on May 10, 2021. On the same day, the Nasdaq Composite Index ("Nasdaq") was nearly flat at minus 0.1%, and a comparable industry index, the Nasdaq Biotechnology Index ("NGI"), rose 0.50%.

225. The Company's stock price continued to decline on the following two trading days, as the market further absorbed the adverse news, closing at \$39.53 per share on May 12, 2021 and \$36.40 on May 13, 2021. This was an additional 8.3% decline on May 12 and 7.9% decline on May 13. The Nasdaq lost only 2.7% on May 12 and increased by 0.7% on May 13. Meanwhile, the NGI remained relatively flat for the two days (minus 0.9% for May 12 and flat at 0.0% for May 13). Berkeley Lights lost another \$449 million in market capitalization over the two days.

Altogether, the Company's common stock price fell by an approximate aggregate 20.1% in value over the three days.

226. As further illustrated by the below chart, the timing and magnitude of the decline in the price of Berkeley Lights common stock when compared to the price movements in the Nasdaq and NGI on the same days negates any inference that losses suffered by Plaintiffs and other Class members were caused by changed market conditions, macroeconomic factors, or Company-specific facts unrelated to Berkeley Lights and the Individual Defendants' fraudulent conduct.



#### **B. August 11, 2021 Disclosure**

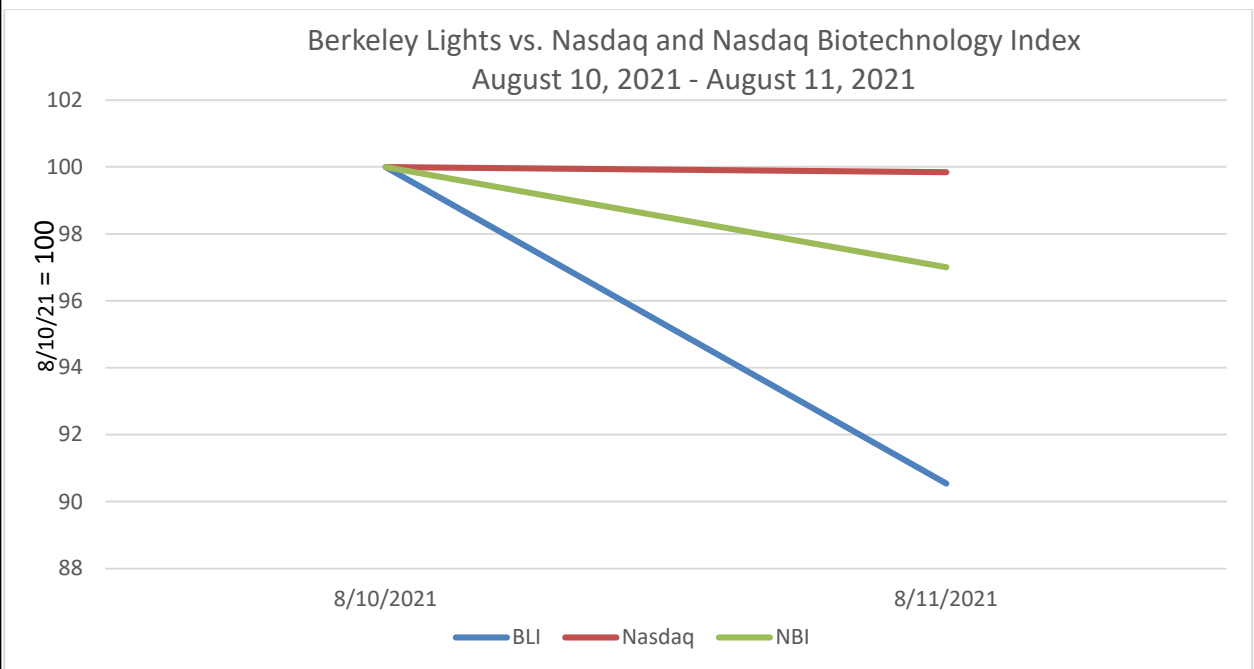
227. On August 11, 2021, Berkeley Lights issued a press release and filed its Form 10-Q announcing its 2Q21 financial results, posting disappointing results for two consecutive quarters. The Company missed earnings marks and placed the fewest number of platforms since a year prior in 2Q20. With only seven platforms placed for the quarter and not a single product placement via subscription, there were again troubling signs of fundamental flaws with the Company's platform.

228. The disclosures and leakage of information on August 11, 2021, as further detailed in ¶¶ 106-11, 129-35, also had a direct impact on Berkeley Lights common stock price. The



Company's stock price fell over 9.5% from \$43.79 per share at close on August 10, 2021 to \$39.65 per share at close on August 11, 2021. In comparison, on the same day the Nasdaq was relatively flat at minus 0.2%, while the NGI lost 3.0%. There was heavy Berkeley Lights trading volume during the day, with over 2 million shares changing hands. The August 11 share price decline resulted in a loss of \$261.3 million in market capitalization for the Company.

229. As further illustrated by the below chart, the timing and magnitude of the decline in the price of Berkeley Lights common stock when compared to the price movements in the Nasdaq and NGI on the same days negates any inference that losses suffered by Plaintiffs and other Class members were caused by changed market conditions, macroeconomic factors, or Company-specific facts unrelated to Berkeley Lights and the Individual Defendants' fraudulent conduct.



### C. September 15, 2021 Disclosure

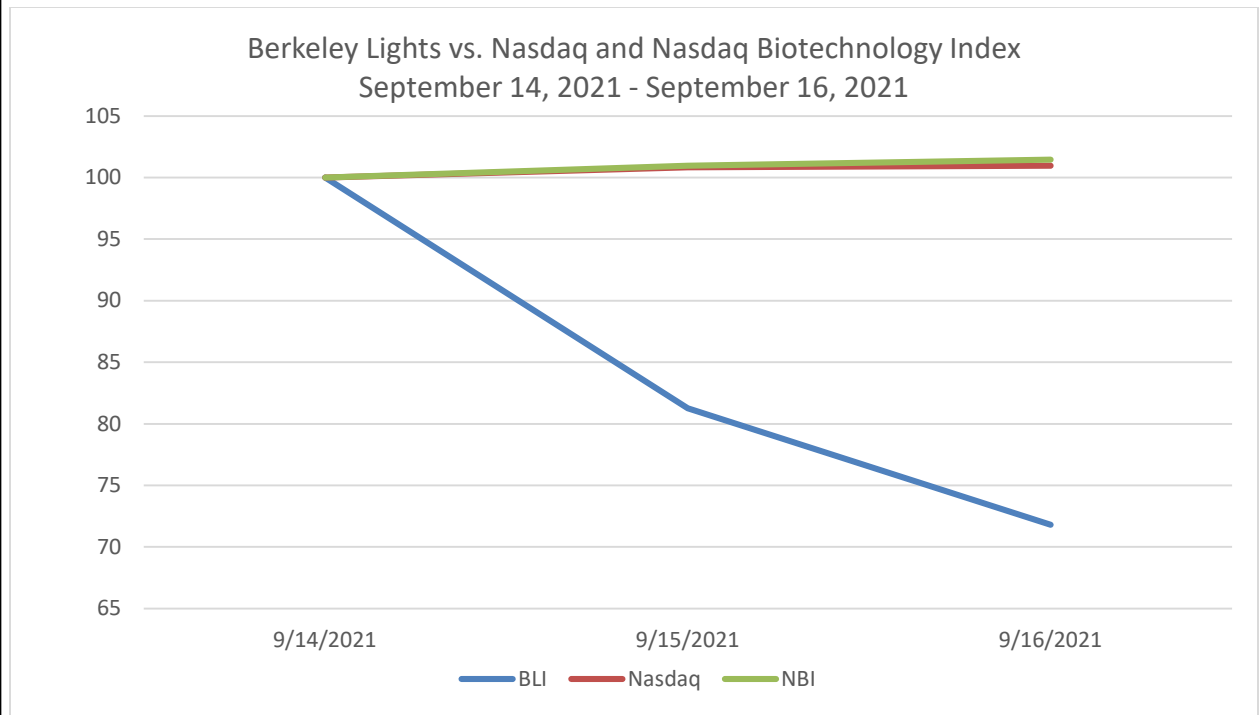
230. On September 15, 2021, Scorpion Capital issued a report condemning Berkeley Lights for "Fleecing Customers" and describing the Company's flagship Beacon platform as a "Black Box That's a Clunker." The report laid bare the Company's prior false and misleading statements and omissions about its platform, revealing that far from being the groundbreaking technology represented to investors in the IPO and leading up to and in connection with the SPO,

1 the Beacon was a flop that, among other issues, experienced extremely high error rates compared  
2 to similar machines and was prone to contamination. The platform was universally derided by the  
3 Company's customers interviewed for the report. And all of this was corroborated by numerous  
4 interviews with former employees or executives at Berkeley Lights.

5 231. In addition, the report revealed the Company's previously reported TAM was  
6 significantly overinflated and that the Company's true TAM was at most \$600 million.

7 232. In direct response to the Scorpion Capital Report disclosing the truth of the  
8 Berkeley Lights platform's capabilities and reliability, as further detailed in ¶¶ 129-35, the  
9 Company's common stock price plummeted. On September 15, 2021, the share price dropped  
10 from a closing price of \$32.76 the day prior to a closing price of \$26.62, an 18.7% decline, on  
11 trading volume of over 7.4 million shares. As the market continued to digest the disclosures from  
12 the Scorpion Capital Report on September 16, the share price dropped another 11.6% to a closing  
13 price of \$23.53 for the day. There was heavy trading volume on the day, with over 15.4 million  
14 shares trading hands, or nearly 18 times the average daily trading volume in the stock since the  
15 closing of the IPO. In comparison, on September 15, 2021 the Nasdaq and NBI were both up,  
16 respectively, 0.8% and 1.0%. Similarly, on September 16, 2021, the Nasdaq experienced gains of  
17 0.1% and the NBI of 0.5%. As a result of this drop, the Company's market capitalization shrunk  
18 by \$619.3 million.

19 233. As further illustrated by the below chart, the timing and magnitude of the decline  
20 in the price of Berkeley Lights common stock when compared to the price movements in the  
21 Nasdaq and NGI on the same days negates any inference that losses suffered by Plaintiffs and  
22 other Class members were caused by changed market conditions, macroeconomic factors, or  
23 Company-specific facts unrelated to Berkeley Lights and the Individual Defendants' fraudulent  
24 conduct.



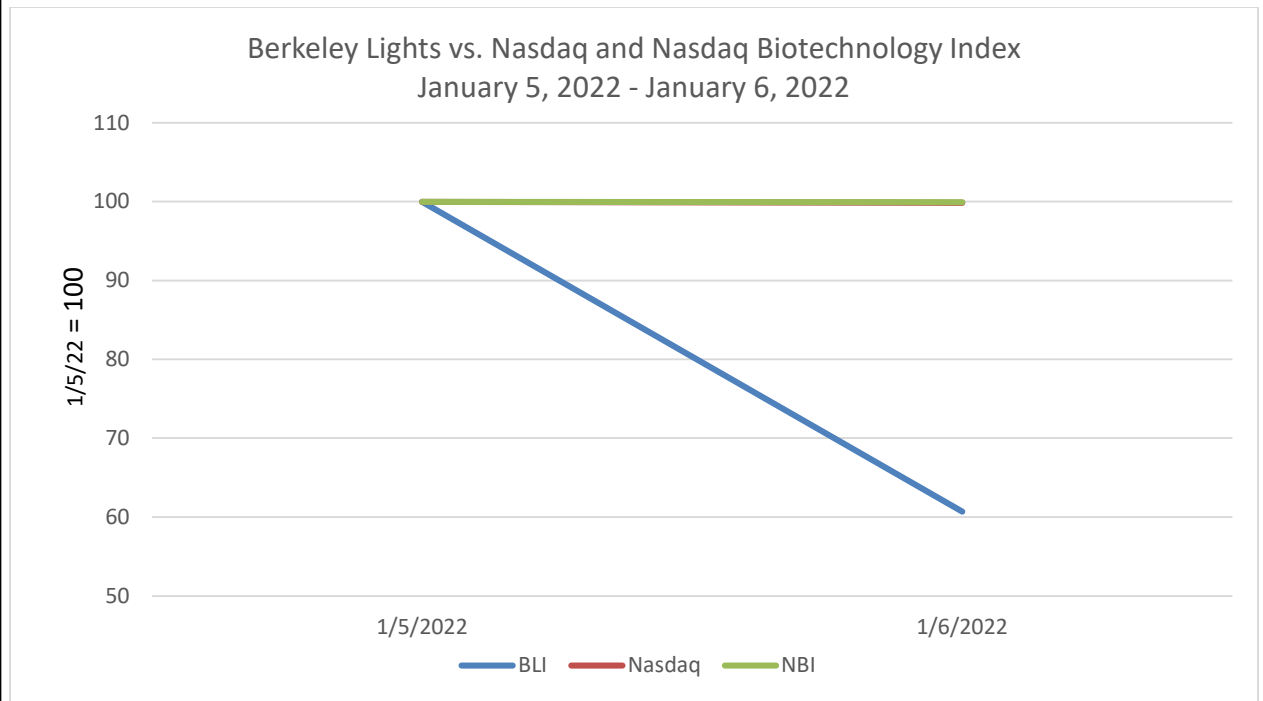
#### D. January 5, 2022 Disclosure

234. On January 5, 2022, Berkeley Lights issued a press release disclosing that it was replacing its CEO, Defendant Hobbs, and that the Company fell well short of projected earnings marks for the prior year. The press release added further credence to the Scorpion Capital Report and drove home the underlying, persistent issues with the Company's platform.

235. The disclosures and leakage of information on January 5, 2022, as further detailed in ¶¶ 148-52, also directly impacted Berkeley Lights common stock price. Made at the close of the markets on January 5, 2022, the share price plunged on the following day, falling from a closing price of \$16.27 on January 5, 2022 to a closing price of \$9.88 per share on January 6, 2022, or a 39.3% drop, on volume in excess of 11.8 million shares. The Nasdaq and NBI were relatively flat for the day, respectively, at minus 0.1% and 0.0%. As a result, Berkeley Lights lost \$431.2 million in market capitalization on the day.

236. As further illustrated by the below chart, the timing and magnitude of the decline in the price of Berkeley Lights common stock when compared to the price movements in the Nasdaq and NGI on the same days negates any inference that losses suffered by Plaintiffs and other Class members were caused by changed market conditions, macroeconomic factors, or

Company-specific facts unrelated to Berkeley Lights and the Individual Defendants' fraudulent conduct.



237. The precipitous declines in the price of Berkeley Lights common stock set forth above were a direct result of the nature and extent of the Individual Defendants' fraud being partially and then finally revealed to investors and the market, and/or the materialization of the risk that they concealed by their misconduct. The timing and magnitude of the decline in the price of Berkeley Lights common stock, particularly when compared to the movements of a general stock index and an appropriate industry index, as reflected in the above charts, negates any inference that the loss suffered by Plaintiffs and the other Class members was caused by changed market conditions, macroeconomic or industry factors or Company-specific facts unrelated to the Defendants' fraudulent conduct.

238. The economic loss, *i.e.*, damages, suffered by Plaintiffs and the other Class members was a direct result of the Defendants' fraudulent scheme to artificially inflate the price of Berkeley Lights common stock and the subsequent significant decline in the value of Berkeley Lights common stock when the Defendants' prior misrepresentations and other fraudulent conduct were revealed and/or the risks that they concealed by such misconduct materialized.

## VII. PRESUMPTION OF RELIANCE

239. At all relevant times, the market for Berkeley Lights common stock was an efficient market for the following reasons, among others:

(a) Berkeley Lights stock met the requirements for listing, and was listed and actively traded on the Nasdaq, a highly efficient and automated market;

(b) according to the Company's Form 10-Q filed November 4, 2021, Berkeley Lights had more than 67 million shares of common stock outstanding as of October 29, 2021;

(c) as a regulated issuer, Berkeley Lights filed periodic public reports with the SEC;

(d) Berkeley Lights regularly communicated with public investors via established market communication mechanisms, including the regular dissemination of press releases on national circuits of major newswire services, the Internet, and other wide-ranging public disclosures; and

(e) unexpected material news about Berkeley Lights was rapidly reflected in and incorporated into the price of Berkeley Lights common stock during the Class Period.

240. As a result of the foregoing, the market for Berkeley Lights common stock promptly digested current information regarding Berkeley Lights from publicly available sources and reflected such information in the price of Berkeley Lights common stock. Under these circumstances, all purchasers of Berkeley Lights common stock during the Class Period suffered similar injury through their purchases of Berkeley Lights common stock at artificially inflated prices, and a presumption of reliance applies.

241. A presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens v. United States*, 406 U.S. 128 (1972), because Plaintiffs' claims are based, in significant part, on Defendants' material omissions. Because this action involves Defendants' failure to disclose material adverse information regarding Berkeley Lights's business, operations and risks, positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have

1 considered them important in making investment decisions. Given the importance of Defendants’  
2 material misstatements and omissions set forth above, that requirement is satisfied here.

### 3 4 **VIII. NO SAFE HARBOR**

5 242. The false and misleading statements alleged herein were not forward-looking. To  
6 the extent any of the alleged false and misleading statements were forward-looking, the federal  
7 statutory safe harbor for forward-looking statements under certain circumstances does not apply.  
8 Many of the specific statements alleged were not identified as “forward-looking statements” when  
9 made. To the extent there were any forward-looking statements, there were no meaningful  
10 cautionary statements accompanying them. To be meaningful, cautionary statements must identify  
11 important factors that could cause actual results to differ materially from those in the purportedly  
12 forward-looking statements. Such cautions were absent from Berkeley Lights’s Class Period  
13 filings and oral disclaimers. And any generalized risk disclosures made by Berkeley Lights were  
14 not sufficient to insulate the Defendants from liability for their materially false and misleading  
15 statements, given the then-existing facts contradicting the statements by the Defendants.

16 243. Further, to the extent that projected revenues and earnings were included in the  
17 Company’s financial reports prepared in accordance with Generally Accepted Accounting  
18 Principles, including those filed with the SEC on Form 8-K, they are excluded from the protection  
19 of the statutory safe harbor. 15 U.S.C. §78u-5(b)(2)(A).

20 244. Defendants are also liable for any false or misleading forward-looking statements  
21 pleaded because, at the time each forward-looking statement was made, the speaker knew the  
22 forward-looking statement was false or misleading and the forward-looking statement was  
23 authorized and/or approved by an executive officer of Berkeley Lights who knew that the forward-  
24 looking statement was false. None of the historic or present tense statements made by Defendants  
25 were assumptions underlying or relating to any plan, projection or statement of future economic  
26 performance, as they were not stated to be such assumptions underlying or relating to any  
27 projection or statement of future economic performance when made, nor were any of the  
28

1 projections or forecasts made by Defendants expressly related to or stated to be dependent on those  
2 historic or present tense statements when made.

3  
4 **COUNT I**

5 **FOR VIOLATION OF §10(B) OF THE EXCHANGE ACT AND SEC RULE 10B-5**  
6 **AGAINST BERKELEY LIGHTS AND THE INDIVIDUAL DEFENDANTS**

7 245. Plaintiffs repeat and reallege every allegation contained above as if set forth herein.

8 246. This Count is brought against Defendants Berkeley Lights, Hobbs, Holt, and Wood.  
9 During the Class Period, the Defendants named in this Count disseminated or approved the false  
10 statements specified above in ¶¶ 80-118, which they knew or deliberately disregarded were  
11 misleading in that they contained misrepresentations and failed to disclose material facts necessary  
12 in order to make the statements made, in light of the circumstances under which they were made,  
13 not misleading.

14 247. Defendants violated §10(b) of the Exchange Act and SEC Rule 10b-5 in that they:

15 (a) employed devices, schemes and artifices to defraud;

16 (b) made untrue statements of material fact or omitted to state material facts  
17 necessary in order to make the statements made, in light of the circumstances under which they  
18 were made, not misleading; or

19 (c) engaged in acts, practices and a course of business that operated as a fraud  
20 or deceit upon Plaintiffs and others similarly situated in connection with their purchases of  
21 Berkeley Lights common stock during the Class Period.

22 248. Defendants, individually and together, directly and indirectly, by use, means and  
23 instrumentalities of interstate commerce and/or the mail, engaged and participated in a continuous  
24 course of conduct to conceal the truth and/or adverse material information about Berkeley Lights's  
25 business, operations and financial condition as specified herein.

26 249. Defendants had actual knowledge of the misrepresentations and omissions of  
27 material facts set forth herein, or recklessly disregarded the true facts that were available to them.





1 filings and other statements alleged by Plaintiffs to be misleading before and/or shortly after these  
2 statements were issued and had the ability to prevent the issuance of the statements or cause the  
3 statements to be corrected.

4       255. Defendants Khandros, WRVI, Sequoia, and Nikon acted as controlling persons of  
5 Berkeley Lights within the meaning of §20(a) of the Exchange Act by virtue of their share of  
6 ownership, power to appoint directors, including through the appointment and service of  
7 themselves (Khandros) or their managing personnel (Marks, Moritz, and Shintani from,  
8 respectively, WRVI, Sequoia, and Nikon) as directors, and/or agreements with the Company. By  
9 reason of the foregoing, Khandros, WRVI, Sequoia, and Nikon had the power to influence and  
10 control, and did influence and control, directly or indirectly, the decision-making of the Company,  
11 including the content and dissemination of various statements that Plaintiffs contend are false and  
12 misleading. Khandros, WRVI, Sequoia, and Nikon were provided with, or had unlimited access  
13 to copies of, some or all of the Company's public filings and other statements alleged by Plaintiffs  
14 to be misleading before and/or shortly after these statements were issued and had the ability to  
15 prevent the issuance of the statements or cause the statements to be corrected.

16       256. As set forth above, Berkeley Lights violated §10(b) and Rule 10b-5 promulgated  
17 thereunder by its acts and omissions as alleged in this complaint. By virtue of their positions as  
18 controlling persons, and as a result of their aforementioned conduct, the Individual Defendants and  
19 Control Defendants are liable pursuant to §20(a) of the Exchange Act for the §10(b) violations.  
20 As a direct and proximate result of these Defendants' wrongful conduct, Plaintiffs and other  
21 members of the Class suffered damages in connection with their purchases of the Company's stock  
22 during the Class Period, as evidenced by, among others, the stock price declines discussed above,  
23 when the artificial inflation was released from the Company's stock.

**NON-FRAUD SECURITIES ACT CLAIMS**

257. The claims set forth below in Counts III-V allege violations of §§11, 12(a)(2) and 15 of the Securities Act (“Securities Act Claims”). These Securities Act Claims are based solely on strict liability and negligence—*i.e.*, not intentional or reckless conduct. This section incorporates solely ¶¶ 1-30, 305-10, and expressly disclaims any allegations of fraud, scienter, or recklessness pled herein in connection with the Exchange Act Claims. As such, these Securities Act claims are presented separate and apart from Counts I and II.

**IX. BACKGROUND TO THE SECURITIES ACT CLAIMS**

258. During the Class Period, Berkeley Lights issued prospectuses and registration statements (collectively, “IPO Materials”) in connection with the Company’s July 2020 IPO. Under the Securities Act, Berkeley Lights, the individuals who signed the IPO Materials, and the underwriters to the IPO, are liable jointly and severally for materially false or misleading statements or omissions in the IPO Materials.

259. The IPO Materials issued in connection with the July 2020 IPO contained false and misleading statements, which misrepresented the business and value of Berkeley Lights. Defendants priced the July 2020 IPO at \$22 per share. At the filing date of this complaint, with the true facts about Berkeley Lights having been revealed, the Company’s stock is trading at less than \$4.35 per share, resulting in millions of dollars of investor losses.

260. The Securities Act Claims seek to recover such losses suffered by Class members who purchased shares of Berkeley Lights common stock pursuant and traceable to the false and misleading IPO Materials.

**X. SECURITIES ACT DEFENDANTS**

261. Defendants Berkeley Lights, Eric Hobbs, Shaun Holt, Igor Khandros, WRVI, Sequoia, and Nikon, *see supra* ¶¶ 21-23, 26-30, are realleged as Defendants for the Securities Act Claims. Defendant Berkeley Lights is the registrant of the securities sold in the July 2020 IPO. Defendants Hobbs, Holt, and Khandros signed the IPO Materials. In addition, Defendant

1 Khandros, along with Defendants WRVI, Sequoia, and Nikon, were controlling persons of  
2 Berkeley Lights throughout the Class Period, including in connection with the IPO, as alleged  
3 above, ¶¶ 49-67, 252-56.

4       262. The Securities Act Claims are also brought against current and former Berkeley  
5 Lights Board of Directors members identified below, who each signed the IPO Materials at issue,  
6 and/or were named as directors in the registration statements for the IPO (collectively, “Director  
7 Defendants”):

8               (a) Defendant Igor Khandros was a director on Berkeley Lights during the  
9 Class Period. Defendant Khandros signed the IPO Materials for the July 2020 IPO.

10              (b) Defendant Michael Marks was a director on Berkeley Lights during the  
11 Class Period. Defendant Marks signed the IPO Materials for the July 2020 IPO.

12              (c) Defendant Sarah Boyce was a director on Berkeley Lights during the Class  
13 Period. Defendant Boyce signed the IPO Materials for the July 2020 IPO.

14              (d) Defendant Gregory Lucier was a director on Berkeley Lights during the  
15 Class Period. Defendant Lucier signed the IPO Materials for the July 2020 IPO.

16              (e) Defendant Michael Moritz was a director on Berkeley Lights during the  
17 Class Period. Defendant Moritz signed the IPO Materials for the July 2020 IPO.

18              (f) Defendant Elizabeth Nelson was a director on Berkeley Lights during the  
19 Class Period. Defendant Nelson signed the IPO Materials for the July 2020 IPO.

20              (g) Defendant James Rothman was a director on Berkeley Lights during the  
21 Class Period. Defendant Rothman signed the IPO Materials for the July 2020 IPO.

22              (h) Defendant Ming Wu was a director on Berkeley Lights during the Class  
23 Period. Defendant Wu signed the IPO Materials for the July 2020 IPO.

24              (i) Defendant Makoto Shintani was a director on Berkeley Lights during the  
25 Class Period. Defendant signed the IPO Materials for the July 2020 IPO.

26       263. The Securities Act Claims are also brought against the below underwriters for the  
27 IPO (collectively, “Underwriter Defendants”):  
28

1 (j) Defendant JP Morgan Securities LLC (“J.P. Morgan”) served as an  
2 underwriter for the July 2020 IPO.

3 (k) Defendant Morgan Stanley & Co. LLC (“Morgan Stanley”) served as an  
4 underwriter for the July 2020 IPO.

5 (l) Defendant Cowen and Company LLC (“Cowen”) served as an underwriter  
6 for the July 2020 IPO.

7 (m) Defendant William Blair and Company LLC (“William Blair”) served as an  
8 underwriter for the July 2020 IPO.

9 264. The Defendants identified in ¶¶ 261-63 are referred to collectively as the  
10 “Securities Act Defendants.”

# 11 12 **XI. THE IPO MATERIALS WERE FALSE AND MISLEADING**

13 265. In July 2020, Berkeley Lights was taken public through an IPO of its common stock  
14 at \$22 per share. The IPO was sold pursuant to a prospectus for an offering of Berkeley Lights  
15 stock filed with the SEC on Form 424B4 on July 17, 2020, which incorporated a registration  
16 statement for the offering filed on Form S-1 on July 16, 2020. These IPO Materials were signed  
17 by Defendants Hobbs, Holt, Boyce, Khandros, Lucier, Marks, Moritz, Nelson, Rothman, Wu, and  
18 Shintani. Defendants J.P. Morgan, Morgan Stanley, Cowen, and William Blair acted as  
19 underwriters for the July 2020 IPO.

20 266. The IPO Registration Statement and Prospectus contained untrue statements of  
21 material facts, and omitted to state other facts necessary to make the statements made not  
22 misleading, including the below false and misleading statements:

23 (a) The IPO Registration Statement highlighted the purported superiority of the  
24 Berkeley Lights platform compared to existing cell analyzing instruments, stating, for example,  
25 that the platform provides “the most advanced environment for rapid functional characterization  
26 of single cells at scale.” The IPO Registration Statement also stated that the Berkeley Lights  
27 platform delivered “the best cells” and “provides the deepest information, with linked phenotypic  
28 and genotypic data, on tens of thousands of live single cells relevant to the customers’ end product

1 specifications.” The IPO Registration Statement also claimed that “this level of scale and precision  
2 is not attainable with other approaches.”

3 (b) The IPO Registration Statement described the Berkeley Lights platform as  
4 enabling the Company’s customers “to find the best cells” by offering advanced capabilities,  
5 including as follows:

- 6 • Performing rapid functional characterization of tens of thousands of single cells in  
7 parallel;
- 8 • Precisely controlling the environment around each cell, and maintaining cells in a  
9 healthy state for further use;
- 10 • Accessing a high degree of cell biodiversity;
- 11 • Deep Opto Profiling of the relevant phenotypic characteristics, at single-cell  
12 resolution over time and connecting this to the genotypic information for each cell;
- 13 • Performing a broad range of workflows, including single-cell assays, on an  
14 integrated platform; and
- 15 • Digitally aggregating, accessing, and analyzing a rich data library for each single  
16 cell.

16 (c) The IPO Registration Statement also highlighted Berkeley Lights’s  
17 purported operational and financial growth, stating that the Company’s direct platform sales had  
18 increased 84% year-over-year to \$39.1 million for its fiscal 2019. The IPO Registration Statement  
19 stated that this segment growth had continued in the first quarter of 2020, as the Company  
20 generated \$9.4 million in direct platform sales during the quarter, an increase over the first quarter  
21 of 2020. Similarly, the IPO Registration Statement stated that Berkeley Lights had placed 26  
22 machines in 2019, a 117% increase over the prior year, and six machines in the first quarter of  
23 2020, a 20% increase over the first quarter of 2019. The IPO Registration Statement represented  
24 that the “total addressable market” for the Company’s products and services was “\$23 billion.”

25 267. Finally, the IPO Registration Statement included the following statement as one of  
26 its “Risk Factors”:

27 The Berkeley Lights Platform is comprised of OptoSelect chips and reagent kits,  
28 advanced automation systems and advanced application and workflow software,  
which may contain undetected errors or defects and may not meet the expectations

1 of our customers, which means our business, financial condition, results of  
2 operations and prospects could suffer.

3 268. At the time they were made, the statements in ¶¶ 266-67 were materially false or  
4 misleading because they failed to disclose the adverse facts pertaining to Berkeley Lights's  
5 business, operations, and financial condition, including:

6 (a) that Berkeley Lights's flagship instrument, the Beacon, suffered from  
7 numerous design and manufacturing defects including breakdowns, high error rates, data integrity  
8 issues and other problems, limiting the ability of biotechnology companies and research  
9 institutions to consistently use the machines at scale;

10 (b) that Berkeley Lights had received numerous customer complaints regarding  
11 the durability and effectiveness of the Company's automation systems, including complaints  
12 related to the design and manufacturing detailed in (a), above, and described herein;

13 (c) that the actual market for Berkeley Lights's products and services was a  
14 fraction of the \$23 billion represented to investors because of, inter alia, the relatively high cost of  
15 the Company's instruments and consumables and inability to provide the sustained performance  
16 necessary to justify these high costs;

17 (d) As a result of (a)-(c), above, Defendants' statements in the July 2020 IPO  
18 regarding Berkeley Lights's business, operations and financial results were materially false and  
19 misleading.

20 269. While the July 2020 IPO Materials enumerated certain generic "risk factors," these  
21 risk factors did not disclose the specific risks associated with the capabilities and reliability of the  
22 Berkeley Lights platform and their impact on Berkeley Lights's business, operations, and financial  
23 condition.

## 24 25 **XII. THE IPO MATERIALS VIOLATED ITEM 303 AND ITEM 505**

26 270. In addition to the misstatements and omissions set forth above, the IPO Materials  
27 were false and misleading because they failed to disclose material information that was required  
28 to be disclosed pursuant to the regulations governing their preparation.



1           271. Specifically, Item 303 required the IPO Materials to “[d]escribe any known trends  
2 or uncertainties that have had or that [the Company reasonably expects are] likely to have a  
3 material favorable or unfavorable impact on net sales or revenues or income from continuing  
4 operations,” 17 C.F.R. §229.303(b)(2)(ii), and Item 105 required the IPO Materials to provide “a  
5 discussion of the material factors that make an investment in the registrant or offering speculative  
6 or risky,” 17 C.F.R. §229.105.

7           272. In negligent violation of Item 303 and Item 105, the IPO Materials failed to disclose  
8 the significant problems with the reliability and capabilities of the Company’s platform,  
9 specifically, that: (1) Berkeley Lights’s flagship instrument, the Beacon, suffered from numerous  
10 design and manufacturing defects including breakdowns, high error rates, data integrity issues and  
11 other problems, limiting the ability of biotechnology companies and research institutions to  
12 consistently use the machines at scale; and (2) Berkeley Lights had received numerous customer  
13 complaints regarding the durability and effectiveness of the Company’s automation systems,  
14 including complaints related to the design and manufacturing detailed in (1), above. Further, the  
15 IPO Materials failed to disclose the true size of the Company’s total addressable market. The  
16 severe problems being experienced by Berkeley Lights’ customers when using the Company’s  
17 platform and the true size of the Company’s total addressable market were known to management,  
18 presented a significant uncertainty, and made investment in Berkeley Lights risky given that the  
19 Company is essentially a one product company and the reliability and capability of, and market  
20 size for, its platform, and in particular, the Beacon, were vital to the Company’s success and  
21 created a known uncertainty and risk that the Company would be unable to place significant  
22 additional numbers of its platform with customers and/or expand its service offerings to new or  
23 repeat customers, thus compromising all of Berkeley Lights’s revenue.

24           273. As set forth in ¶¶ 119-52 above, subsequent disclosures have confirmed that the  
25 IPO Materials contained materially false and misleading statements and failed to disclose required  
26 information, in that they omitted to disclose, for example, the significant problems with the  
27 reliability and capabilities of the Company’s platform, specifically, that: (1) Berkeley Lights’s  
28 flagship instrument, the Beacon, suffered from numerous design and manufacturing defects

1 including breakdowns, high error rates, data integrity issues and other problems, limiting the  
 2 ability of biotechnology companies and research institutions to consistently use the machines at  
 3 scale; and (2) Berkeley Lights had received numerous customer complaints regarding the  
 4 durability and effectiveness of the Company's automation systems, including complaints related  
 5 to the design and manufacturing detailed in (1), above. Since the July 2020 IPO, the price of  
 6 Berkeley Lights common stock has declined by approximately 80% as of this filing.

### 8 **COUNT III**

#### 9 **FOR VIOLATION OF § 11 OF THE SECURITIES ACT AGAINST BERKELEY** 10 **LIGHTS, HOBBS, HOLT, THE DIRECTOR DEFENDANTS, AND THE** **UNDERWRITER DEFENDANTS**

11 274. Plaintiff incorporates ¶¶ 21-23, 26-30, 49-67, 261-73 by reference.

12 275. This Count is brought under § 11 of the Securities Act, 15 U.S.C. § 77k, on behalf  
 13 of the Class, against Defendants Berkeley Lights, Hobbs, Holt, the Director Defendants, and the  
 14 Underwriter Defendants.

15 276. This Count does not sound in fraud. With respect to this Count, Plaintiffs do not  
 16 claim that any of the Defendants committed intentional or reckless misconduct or that any of the  
 17 Defendants acted with scienter or fraudulent intent. This claim is based solely on strict liability  
 18 and negligence.

19 277. The IPO Materials for the July 2020 IPO were inaccurate and misleading, contained  
 20 untrue statements of material facts, omitted to state other facts necessary to make the statements  
 21 made not misleading, and omitted to state material facts required to be stated therein.

22 278. Berkeley Lights is the registrant for the shares of Berkeley Lights stock, and as such  
 23 is strictly liable for the false and misleading statements in the IPO Materials. The Underwriter  
 24 Defendants were responsible for the contents and dissemination of the IPO Materials used in the  
 25 offerings for which they served as underwriters. *See supra* ¶¶ 263. Defendants Hobbs and Holt,  
 26 as well as the Director Defendants, were responsible for the contents and dissemination of the IPO  
 27 Materials they signed. *Id.* ¶¶ 261-62.

1           279. None of the Defendants named herein made a reasonable investigation or possessed  
2 reasonable grounds to believe that the statements contained in the IPO Materials were true and  
3 without omissions of material facts and were not misleading. By virtue of each of the Defendants'  
4 failure to exercise reasonable care, the IPO Materials contained misrepresentations of material  
5 facts and omissions of material facts necessary to make the statements therein not misleading.

6           280. None of the untrue statements or omissions of material fact in the IPO Materials  
7 alleged herein were forward-looking statements. Rather, each statement or omission concerned  
8 existing facts. Moreover, the IPO Materials did not properly identify any of the alleged false or  
9 misleading statements as forward-looking statements and did not disclose information that  
10 undermined the putative validity of those statements.

11           281. The Retirement System and/or members of the Class acquired Berkeley Lights  
12 stock in the IPO in which shares were offered and/or sold pursuant to the above-described IPO  
13 Materials.

14           282. At the times of their purchases, Plaintiffs and other members of the Class were  
15 without knowledge of the facts concerning the misstatements and omissions alleged herein and  
16 could not have reasonably discovered those facts prior to the disclosures herein. Less than one  
17 year has elapsed from the time that Plaintiffs discovered or could have reasonably discovered the  
18 facts upon which this complaint is based to the time that Plaintiffs commenced this action. Less  
19 than three years has elapsed between the time that the securities upon which this Count is brought  
20 were offered to the public and the time Plaintiffs commenced this action.

21           283. The Retirement System, and members of the Class have sustained damages, as the  
22 value of Berkeley Lights's stock purchased or otherwise acquired pursuant or traceable to the  
23 materially false and misleading IPO Materials has declined substantially from the date of the  
24 offering to the date of this filing.

25           284. By reason of the conduct herein, Berkeley Lights, Hobbs, Holt, the Director  
26 Defendants, and the Underwriter Defendant have each violated § 11 of the Securities Act.

**COUNT IV**

**VIOLATION OF § 12(A)(2) OF THE SECURITIES ACT AGAINST BERKELEY LIGHTS, HOBBS, HOLT, THE DIRECTOR DEFENDANTS, AND THE UNDERWRITER DEFENDANTS**

285. Plaintiffs incorporate ¶¶ 21-23, 26-30, 49-67, 261-73 by reference.

286. This Count is brought under § 12(a)(2) of the Securities Act, 15 U.S.C. §771(a)(2), on behalf of the Class, against Defendants Berkeley Lights, Hobbs, Holt, the Director Defendants, and the Underwriter Defendants. With respect to this Count, Plaintiffs do not claim that any of the Defendants committed intentional acts or reckless misconduct or that any of the Defendants acted with scienter or fraudulent intent. This claim is based on strict liability and negligence.

287. Section 12(a)(2) grants a private right of action against any person who offers or sells a security “by means of a prospectus . . . which includes an untrue statement of material fact or omits to state a fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading. 15 U.S.C. §771(a)(2).

288. The IPO Materials were inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

289. Berkeley Lights was a seller, offeror, and/or solicitor of purchases of its common stock pursuant to the defective IPO Materials and directly solicited the purchase of its common stock through means of the IPO Materials.

290. The Director Defendants (for the IPO Materials they signed, ¶ 262), the Underwriter Defendants (for the IPO Materials used in the offerings for which they served as Underwriters, ¶ 263), and Defendants Hobbs and Holt (for the IPO Materials they signed, *see* ¶ 261) were sellers, offerors and/or solicitors of purchasers of Berkeley Lights common stock pursuant to the defective IPO Materials, and directly solicited the purchase of Berkeley Lights common stock through means of the IPO Materials. Acts of solicitation included participating in the preparation of, or signing, the false and misleading IPO Materials, and/or selling shares of stock pursuant to the false and misleading IPO Materials.

1           291. None of the Defendants named herein made a reasonable investigation or possessed  
2 reasonable grounds for the belief that the statements contained in the IPO Materials were true and  
3 without omissions of material facts and were not misleading.

4           292. By virtue of each of the Defendants' failure to exercise reasonable care, the IPO  
5 Materials contained misrepresentations of material facts and omissions of material facts necessary  
6 to make the statements therein misleading.

7           293. None of the untrue statements or omissions of material fact in the IPO Materials  
8 alleged herein were forward-looking statements. Rather, each statement or omission concerned  
9 existing facts. Moreover, the IPO Materials did not properly identify any of the alleged false or  
10 misleading statements as forward-looking statements and did not disclose information that  
11 undermined the putative validity of those statements.

12           294. The Retirement System and/or members of the Class acquired Berkeley Lights  
13 stock in the July 2020 IPO in which shares were offered and/or sold pursuant to the above-  
14 described IPO Materials.

15           295. At the times of their purchases, named Plaintiffs and other members of the Class  
16 were without knowledge of the facts concerning the misstatements and omissions alleged herein  
17 and could not have reasonably discovered those facts prior to the disclosures herein. Less than  
18 one year has elapsed from the time that Plaintiffs discovered or could have reasonably discovered  
19 the facts upon which this complaint is based to the time that Plaintiffs commenced this action.  
20 Less than three years has elapsed between the time that the securities upon which this Count is  
21 brought were offered to the public and the time Plaintiffs commenced this action.

22           296. The Plaintiffs and other members of the Class have sustained damages, as the value  
23 of Berkeley Lights's stock purchased or otherwise acquired pursuant or traceable to the materially  
24 false and misleading IPO Materials has declined substantially from the dates of the offerings to  
25 the date of this filing.

26           297. By reason of the conduct herein alleged, Berkeley Lights, Hobbs, Holt, the Director  
27 Defendants, and the Underwriter Defendants violated §12(a)(2) of the Securities Act.  
28

298. Accordingly, members of the Class who hold the common stock issued pursuant to the defective IPO Materials have the right to rescind and recover the consideration paid for their shares and hereby tender their common stock to Defendants sued herein, and Class members who have sold their common stock that was issued pursuant to the defective IPO Materials seek damages to the extent permitted by law.

## COUNT V

### **VIOLATIONS OF § 15 OF THE SECURITIES ACT AGAINST HOBBS, HOLT, KHANDROS, WRVI, SEQUOIA, AND NIKON**

299. Plaintiffs incorporate ¶¶ 21-23, 26-30, 49-67, 261-73 by reference.

300. This Count is brought under § 15 of the Securities Act, 15 U.S.C. §77o, on behalf of the Class, against Defendants Hobbs, Holt, Khandros, WRVI, Sequoia, and Nikon. This Count does not sound in fraud. With respect to this Count, Plaintiffs do not claim that any of the Defendants committed intentional acts or reckless misconduct or that any of the Defendants acted with scienter or fraudulent intent. This claim is based on strict liability and negligence.

301. Defendants Hobbs (the Company's CEO and a director) and Holt (the Company's CFO) acted as controlling persons of Berkeley Lights within the meaning of § 15 of the Securities Act by virtue of their positions as senior officers and/or directors at Berkeley Lights. By reason of their positions at the Company, Hobbs, and Holt, individually and acting pursuant to a common plan, had the power to influence and exercised such power to cause Berkeley Lights to engage in the conduct alleged herein.

302. Defendants Khandros, WRVI, Sequoia, and Nikon acted as controlling persons of Berkeley Lights within the meaning of § 15 of the Securities Act by virtue of their share of ownership, power to appoint directors, including through the appointment and service of themselves (Khandros) or their managing personnel (Defendant Marks, Moritz, and Shintani from, respectively, WRVI, Sequoia, and Nikon) as directors, and/or agreements with the Company. By reason of these relationships with the Company, as further detailed above in ¶¶ 26-30, 49-67, which are incorporated by reference herein, Khandros, WRVI, Sequoia, and Nikon individually

1 and acting pursuant to a common plan, had the power to influence and exercised such power to  
2 cause Berkeley Lights to engage in the conduct alleged herein.

3 303. Defendants Hobbs, Holt, Khandros, WRVI, Sequoia, and Nikon either signed the  
4 IPO Materials and/or otherwise participated in the process which allowed the sale of the shares of  
5 Berkeley Lights common stock to be successfully completed.

6 304. As set forth above, Berkeley Lights violated §§ 11 and 12(a)(2) of the Securities  
7 Act in connection with the July 2020 IPO. By virtue of their positions as controlling persons, and  
8 as a result of their aforementioned conduct, Defendants Hobbs, Holt, Khandros, WRVI, Sequoia,  
9 and Nikon are liable pursuant to § 15 of the Securities Act for the §§ 11 and 12 violations.

### 10 11 **XIII. CLASS ACTION ALLEGATIONS**

12 305. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil  
13 Procedure 23(a) and (b)(3) on behalf of a class consisting of all purchasers of the common stock  
14 of Berkeley Lights during the Class Period, including those who purchased shares of Berkeley  
15 Lights common stock pursuant or traceable to the IPO Materials issued in connection with  
16 Berkeley Lights's July 2020 IPO, and were damaged thereby (the "Class"). Excluded from the  
17 Class are Defendants and members of their immediate families, the officers and directors of the  
18 Company, at all relevant times, and members of their immediate families, the legal representatives,  
19 heirs, successors or assigns of any of the foregoing, and any entity in which Defendants have or  
20 had a controlling interest.

21 306. The members of the Class are so numerous that joinder of all members is  
22 impracticable. Throughout the Class Period, Berkeley Lights common stock was actively traded  
23 on the Nasdaq. While the exact number of Class members is unknown to Plaintiffs at this time  
24 and can only be ascertained through appropriate discovery, Plaintiffs believe that there are  
25 thousands of members in the proposed Class. Record owners and other members of the Class may  
26 be identified from records maintained by Berkeley Lights or its transfer agent and may be notified  
27 of the pendency of this action by mail, using the form of notice similar to that customarily used in  
28 securities class actions.



1           307. Plaintiffs' claims are typical of the claims of the members of the Class as all  
2 members of the Class are similarly affected by Defendants' wrongful conduct in violation of the  
3 federal laws that are complained of herein.

4           308. Plaintiffs will fairly and adequately protect the interests of the members of the Class  
5 and have retained counsel competent and experienced in class and securities litigation.

6           309. Common questions of law and fact exist as to all members of the Class and  
7 predominate over any questions solely affecting individual members of the Class. Among the  
8 questions of law and fact common to the Class are:

9                   (a) whether the Securities Act and Exchange Act were violated by Defendants  
10 as alleged herein;

11                   (b) whether statements made by Defendants misrepresented material facts  
12 about the business, operations, and management of Berkeley Lights; and

13                   (c) to what extent the members of the Class have sustained damages and the  
14 proper measure of damages.

15           310. A class action is superior to all other available methods for the fair and efficient  
16 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the  
17 damages suffered by individual Class members may be relatively small, the expense and burden  
18 of individual litigation make it impossible for members of the Class to individually redress the  
19 wrongs done to them. There will be no difficulty in the management of this action as a class action.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment as follows:

A. Declaring this action to be a class action properly maintained pursuant to Rule 23(a) and b(3) of the Federal Rules of Civil Procedure and certifying Plaintiffs as Class Representatives and Hagens Berman and Robbins Geller Rudman & Dowd LLP as Class Counsel;

B. Awarding compensatory damages in favor of Plaintiffs and the other members of the Class against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiffs reasonable costs and expenses incurred in this action, including attorneys' fees, experts' fees, and other costs and disbursements; and

D. Awarding such further relief, including any equitable/injunctive relief, as the Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiffs hereby demand a trial by jury.

DATED: July 25, 2022

Respectfully submitted,

HAGENS BERMAN SOBOL SHAPIRO LLP

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